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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1973

No. 73-434

WILLIAM G. MILLIKEN, ET AL.,
Petitioners,

vs.

RONALD G. BRADLEY, ET AL.,
Respondents.

No. 73-435

ALLEN PARK PUBLIC SCHOOLS, ET AL.,
Petitioners,

vs.

RONALD G. BRADLEY, ET AL.,
Respondents.

No. 73-436

THE GROSSE POINTE PUBLIC SCHOOL SYSTEM,
Petitioner,

vs.

RONALD G. BRADLEY, ET AL.,
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR RESPONDENTS BOARD OF EDUCATION FOR THE SCHOOL DISTRICT OF THE CITY OF DETROIT, ET AL.

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CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

The constitutional provisions, statutes and rules particularly relevant to the issues in this case are: U.S. Const. Amend. XI; Northwest Ordinance of 1787, art. III; Mich. Const. of 1835, art.

X; Mich. Const. of 1850, art. XIII; Mich. Const. of 1908, art. XI; Mich. Const. of 1963, arts. IV, VIII; 28 U.S.C. §2281; Fed. R. Civ. P. 19; Fed. R. Civ. P. 24; Act 315, Mich. Pub. Acts of 1901; Act 239, Mich. Pub. Acts of 1967; Act 32, Mich. Pub. Acts of 1968; Act 24, Mich. Pub. Acts of 1969; Act 48, §12 Mich. Pub. Acts of 1970; Act 134, Mich. Pub. Acts of 1971; Act 255, Mich. Pub. Acts of 1972; Act 1, Mich. Pub. Acts of 1973; Act 2, Mich. Pub. Acts of 1973; Act 12, Mich. Pub. Acts of 1973; and various Michigan statutes listed in the Index to Appendix to Brief For Respondents Board of Education for the School District of the City of Detroit, *et al.*

Explanatory Note

References to appendices, records and exhibits will be indicated by page numbers enclosed in parentheses and designated as follows: Single volume Appendix to Petitions for Writs of Certiorari: (1a)

Five volume Joint Appendix: (1a 1)

Appendix to this Brief of constitutional, statutory and procedural provisions: (1aa)

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Exhibits: Plaintiffs' (PX)

STATEMENT OF THE CASE

Eight federal judges below (one District Court judge and seven Court of Appeals judges, including one dissenting judge) have found that the State of Michigan has committed *de jure* acts of segregation resulting in the unconstitutional racial isolation of 280,000 school children in the Detroit metropolitan community. These violations, in the Courts' opinion, were the direct result of actions and inaction on the part of officers and agents at the state and local levels, either acting alone or in combination with one another. *Bradley* v. *Milliken*, 338 F. Supp. 582 (E.D. Mich. 1971) (17a); 484 F.2d 215 (6th Cir. 1973) (110a). Consistent with *Brown I*, *Brown II*, and *Swann*, the District Court, exercising its traditional equity power in school segregation cases, has attempted to remedy constitutional violations by fashioning an effective desegregation plan designed to eliminate the vestiges of segregation "root and branch" and to establish "schools, not a White and a Negro school, just schools," so as to prevent resegregation.

1. THE PERVASIVE STATE CONTROL OF EDUCATION IN MICHIGAN

Regardless of what may be true in other states and commonwealths, the single irrefutable fact of the Michigan education system is the existence of legal and practical pervasive state control. The Michigan Constitution of 1963 provides as follows:

> "The Legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. . . ." Mich. Const., art. IV, § 2.

Stemming from the mandate of the Northwest Ordinance of 1787, the above quoted constitutional language was substantially the same in Michigan's three previous constitutions. [Mich. Const., art. X, § 3 (1835); art. XIII, § 4 (1850); art. XI, § 2 (1908)]. Although the Michigan Legislature has created local school districts for administrative convenience, the Michigan Supreme Court has consistently held that these districts are mere instrumentalities and agencies of the State controlled by the State. (166a-167a). This

axiom of Michigan school law has also been affirmed by the United States Supreme Court. (*see* discussion *infra* p. 25).

This pervasive state control of elementary and secondary schools in Michigan is illustrated by the following facts:

(1) Although Michigan had 7,333 school districts in 1910, the number of school districts by June 30, 1972, as a result of legislative fiat, had been reduced to 608. In many cases, these school districts (including several school districts in Wayne County, the county in which Detroit is situated) were merged or annexed by state mandate and without local consent. (168a-169a). However, despite such massive consolidation, school districts in Michigan still bear little relationship to political boundary lines. (*see e.g.*, Ia255).

(2) The state frequently moves property and school children from district to district; provides massive state financing; dictates the number of, and length of, school days; requires certain courses to be taught; controls the use of particular textbooks; approves building plans; and imposes many other standards of regulatory control. (M.C.L.A. §388.1001 *et seq.*).

(3) The State provides certain educational opportunities for Michigan children that are obtained by crossing, on a daily basis, school district boundary lines. (79a).

(4) Under Michigan law (M.C.L.A. §390.51) school building contruction plans must be approved by the State Board of Education. At least during the period from 1949 to 1962, the State Board of Education had specific authority to supervise school site selection.

(5) The construction of schools in the State of Michigan is funded, in whole or in part, through the sale of municipal construction bonds. These bonds must be approved by the Municipal Finance Commission, a state agency that includes in its membership the State Superintendent of Public Instruction, the Governor of the State of Michigan and the Attorney General of the State of Michigan.

The pervasiveness of State control over local school districts in Michigan is no more evident than in the Detroit school district. On at least five occasions since the district was organized in 1842, the State has reorganized the structure of the Detroit Board of Education. The State Legislature in 1969 again proceeded to reorganize not only the structure of the Detroit Board of Education, but the district itself by the enactment of Act 244, Mich. Pub. Acts of 1969, (M.C.L.A. §388.171-177) which required that the Detroit School Board decentralize its administration through the creation of regional districts and regional school boards within the Detroit school district.

In formulating the regional district boundaries within its district in accordance with the standards imposed by Act 244, the Detroit Board of Education, aware of the growing racial isolation within the Detroit school district, proposed what is now known as the April 7th Plan, a plan designed to promote integration by redrawing certain high school district boundaries.

Upon the announcement of the proposed April 7th Plan, the Legislature of the State of Michigan enacted Act 48, Mich. Pub. Acts of 1970, (M.C.L.A. §388.171-183) which suspended implementation of the April 7th Plan. In particular, Section 12 of Act 48, (M.C.L.A. §388.182) provided as follows:

> "Implementation of attendance provisions. Sec. 12. The implementation of any attendance provisions for the 1970-71 school year determined by any first class school district board shall be delayed pending the date of commencement of functions by the first class school district boards established under the provisions of this amendatory act but such provision shall not impair the right of any such board to determine and implement prior to such date such changes in attendance provisions as are mandated by practical necessity. In reviewing, confirming, establishing or modifying attendance provisions the first class school district boards established under the provisions of this amendatory act shall have a policy of open enrollment and shall enable students to attend a school of preference but providing priority acceptance, insofar as practicable, in cases of insufficient school capacity, to those students residing nearest the school and to those students de-

siring to attend the school for participation in vocationally oriented courses or other specialized curriculum."

The last sentence of that Section had the effect of stifling two existing integration policies of the Detroit Board of Education. The first policy was that whenever students were transported to relieve overcrowding of schools, they were to be bused to the first and nearest school where their entry would improve the racial mix. (Drachler Deposition *de bene esse*, 46, 49-51), (R. 2873-2880). The second, under the Detroit Board's open enrollment program, was that students desiring to transfer from one school to another could only do so if the racial mix at the receiving school would be improved. (Drachler Deposition *de bene esse*, 151), (IIa 8-9).

The enactment and implementation of Act 48 not only intentionally frustrated integration efforts within the Detroit school system, in order to preserve and maintain a condition of segregation, but also further evidenced the State of Michigan's plenary power over local school districts

2. THE LITIGATION

As a result of these actions of the State, Respondents Ronald Bradley, *et al.*, filed a complaint seeking a preliminary injunction to restrain the enforcement of Act 48, challenging the constitutionality of that legislation and alleging constitutional violations on the part of the Detroit Board of Education and the State of Michigan, through various state officers at the state level. (2a). The District Court refused to issue a preliminary injunction, did not rule on the constitutionality of Act 48, and dismissed the Governor and Attorney General of Michigan as parties defendants to this cause. On the first appeal to the Court of Appeals for the Sixth Circuit, that Court held Section 12 of Act 48 to be an unconstitutional interference with the Fourteenth Amendment rights of Respondents Ronald Bradley, *et al.*, and the dismissal of the Governor and the Attorney General as parties at that stage of the proceedings to be improper, 433 F. 2d 897 (6th Cir. 1970). On the second appeal, the Sixth Circuit held that the implementation of an interim desegregation plan was not an abuse of judicial discretion by the District Court. The case was remanded to the Dis-

trict Court with instructions to move as expeditiously as possible. 438 F. 2d 945 (6th Cir. 1971). The trial on the issue of segregation began on April 6, 1971 and continued through July 22, 1971, consuming 41 trial days.

3. THE STATE VIOLATIONS

On September 27, 1971 the District Court issued its Ruling on Issue of Segregation (17a) and, as affirmed by the Court of Appeals for the Sixth Circuit, found that under Michigan school law, the State of Michigan did indeed exercise pervasive control over site selection, bonding, and school construction, both within and without the Detroit school system. The District Court also found that the State of Michigan failed to implement its enunciated policy, as expressed in a Joint Policy Statement on Equality of Education Opportunity (P.X. 174) and as reaffirmed in the State Board of Education's "School Plant Planning Handbook", (P.X. 70, at p. 15). This policy required local school boards to consider the factor of racial balance in making preliminary decisions regarding site selection and school construction expansion plans.

During the critical years covered by the record in this litigation, the District Court found, and the Court of Appeals affirmed, that the State of Michigan denied the Detroit school district state funds for pupil transportation, although such funds were readily made available for students in other districts who lived more than a mile and one-half from their assigned schools. (IIIa 31-35). A purpose of this provision for pupil transportation aid in Michigan was intended to benefit school children residing in rural areas. But, the fact of the matter is that many of the suburban school districts that are Petitioners before this Honorable Court were grandfathered into the various state transportation aid acts. As a result, many previously rural communities suburban to Detroit receive transportation aid disbursements despite the fact that they are now heavily urbanized. Although the distances to schools in Detroit for many of the school children above the elementary school level have for many years exceeded the mile and one-half criterion (R. 2825-6), it was not until 1970 that the State Legislature provided that the Detroit school district was eligible to participate in the Transportation Aid Fund. (IIIa 32). The apparent

benefits of that legislation were totally illusory, for the State Legislature failed to provide the additional funding necessary to provide for disbursements to the Detroit school system and ordered the State Board of Education to continue to disburse available funds only to those rural and suburban school districts which had previously been eligible. (IIIa 31). Subsequently, the Michigan Legislature further mandated that allocations to the school transportation aid fund were not to be used for purposes of desegregation. (M.C.L.A. §388.1179).

Recognizing that school districts in the State of Michigan are indeed mere agencies or instrumentalities of the State pervasively controlled by the State, the District Court, as affirmed by the Court of Appeals, found that the actions and inaction of the Detroit Board of Education were in fact the actions and inaction of the State of Michigan.

Specifically, the Courts below found that the Detroit Board of Education: (1) maintained optional attendance zones in neighborhoods undergoing racial transition and between high school attendance areas of opposite predominate racial composition which had the effect of fostering segregation; (2) built, with the imprimatur of the State Board of Education and Municipal Finance Authority, a number of schools which resulted in continued or increased segregation; (3) maintained feeder patterns that resulted in segregation; and (4) bussed black pupils past or away from closer white schools with available space, to black schools. (25a), (110a).

The Courts below concluded that the natural and probable consequences of the actions and inaction on the part of state officials at all levels combined to reinforce one another so as to foster segregation, thus violating the Fourteenth Amendment rights of the school children in the Detroit community.

Although the Detroit Board of Education maintains that, as a local state agency, it had taken no actions which resulted in the current condition of segregation forming the basis of the original

complaint, but instead had taken positive steps to promote integration in its schools, it has not appealed the lower court findings for the following reasons: (1) the consistent findings of violations in the Courts below; (2) this Honorable Court's recent decision in *Keyes;* and (3) a recognition by the Detroit Board that it is a mere instrumentality of the State under Michigan law and therefore, regardless of whether violations were found to have been committed either by state officers at the state level alone, or by state officers at the local level, the result would be the same. It is incumbent upon the State of Michigan ultimately to remedy the violations.

4. THE REMEDIAL ASPECTS

(a) Due Process Claims.

Following the September 27, 1971 ruling on the constitutional violation, *Bradley* v. *Milliken,* 338 F.Supp. 582 (E.D. Mich. 1971), the District Court on October 4, 1971 held a pre-trial conference during which it ordered the Detroit Board of Education to submit its plans for desegregation of the Detroit school system, limited to Detroit-only, within sixty days. The Court further ordered the Petitioners William Milliken, *et al.* to submit plans of desegregation, not limited to Detroit, within one hundred and twenty days. (43a). A written order to this effect was entered by the District Court on November 5, 1971. (46a).

As had all prior aspects of the litigation, the findings and order of the District Court received wide spread news media coverage throughout the Detroit metropolitan area and the State of Michigan.

It was not until February 10, 1972, some three months subsequent to the findings of the District Court on the issue of segregation and the order for preparation of plans, that any of the Petitioner school districts filed motions for intervention. (Ia 185, 189, 192, 196). In filing such motions, the Petitioner school districts indicated that they chose not to intervene earlier because their interests were not affected by the prior proceedings in this litigation. (Ia 190, 196, 201-02). A hearing on the motions for intervention was held on February 22, 1972 (Ia 187) and the District Court took the motions under advisement pending submission of a

desegregation plan. On March 7, 1972, the District Court notified all parties and the Petitioner school districts seeking intervention, that March 14, 1972 was the deadline for submission of recommendations for conditions of intervention and the date of the commencement of hearings on Detroit-only desegregation plans. (Ia 198, 199, 203). Recommendations for conditions of intervention were filed in a letter to the Court on March 14, 1972 by Petitioner Grosse Pointe Public School System. That letter stated that Petitioner Grosse Pointe Public School System would have no objections to a limitation on the litigation of matters previously adjudicated by the District Court. (Ia 201-02). In response to all of the recommendations on conditions of intervention, the District Court, on March 15, 1972, granted intervention to the Petitioner school districts under conditions which were, for the most part, in accordance with those suggested to the District Court by the suburban school districts themselves. (Ia 205-07). Although intervention was granted on the second day of hearings on Detroit-only desegregation remedies, the Petitioner school districts voluntarily elected not to participate in the proceedings below until April 4, 1972, the first day of hearings on metropolitan desegregation remedies. (IVa 142-143).

(b) The Complete Ineffectiveness of Detroit-Only Plans.

Following the hearings on Detroit-only desegregation plans, the District Court found that Plan A proposed by the Detroit Board of Education was merely an extension of the so-called Magnet Plan, a plan designed to attract children to a school because of its superior curriculum. The District Court found that although the plan proposed at the high school level offered a "greater and wider degree of specialization" it would not be "effective to desegregate the public schools of the City of Detroit" because of the "failure of the current model to achieve any appreciable success." (54a). The Court went on to find "at the Middle School level, that the expanded model would affect, directly, about 24,000 pupils of a total of 140,000 in the grades covered." (54a). It then concluded that "[i]n this sense it would increase segregation." (54a). In addition, Plan A "[a]s conceded by its author" was "neither a desegregation nor an integration plan." (54a). As to the Detroit Board's Plan C, the District Court found

that it was "a token or part-time desegregation effort" and covered "only a portion of the grades and would leave the base schools no less racially identifiable." (54a).

As to the Detroit-only plan proposed by Respondents Ronald Bradley, *et al.*, the District Court found:

> "2. We find further that the racial composition of the student body is such that the plan's implementation would clearly make the entire Detroit public school system racially identifiable as Black.
>
> "3. The plan would require the development of transportation on a vast scale which, according to the evidence, could not be furnished, ready for operation, by the opening of the 1972-73 school year. The plan contemplates the transportation of 82,000 pupils and would require the acquisition of some 900 vehicles, the hiring and training of a great number of drivers, the procurement of space for storage and maintenance, the recruitment of maintenance and the not negligible task of designing a transportation system to service the schools.
>
> * * *
>
> "7. The plan would make the Detroit school system more identifiably Black, and leave many of its schools 75 to 90 per cent Black.
>
> "8. It would change a school system which is not Black and White to one that would be perceived as Black, thereby increasing the flight of Whites from the city and the system, thereby increasing the Black student population." (54-55a).

In summary, the Court found "that none of the three plans would result in the desegregation of the public schools of the Detroit school district." (55a). The six judge majority of the Court of Appeals sustained the finding of the District Court that no Detroit-only plan would result in the desegregation of the Detroit school district. (159a-165a). This finding was made against the backdrop of the following facts:

(1) *The City of Detroit:* The geographical boundaries of the Detroit School District are identical to the geographical boundaries of the City of Detroit, covering an area of 139.6 square miles. It contains within its boundaries two entirely separate cities (and school districts), Hamtramck and Highland Park, and surrounds a third city (and school district), Dearborn, on three sides. It is a fully urbanized area serviced by a network of five interconnecting freeway systems and has five excellent surface thoroughfares emanating from the central business district to its northern border along Eight Mile Road.

The great majority of its populace lives in privately owned residences, Detroit having the highest percentage of private homeownership of any urban center in the United States. The racial characteristics of the population of the City of Detroit in 1970-71 is reflected in a ratio of 56% white and 44% black. However, the racial characteristics of the student population in the Detroit school district are reflected in the following statistics:

1960-61: 46% black - 54% white
66% of Detroit's black students attended
90% or more black schools

1970-71: 64% black - 36% white
75% of Detroit's black students attended
90% or more black schools. (A.Ia 14f).

Projections indicate:

1975-76: 72% black - 28% white
1980-81: 81% black - 19% white
1990-91: nearly 100% black (20a).

This reflects a present and expanding pattern of all black schools in Detroit, resulting in part from State action.

(2) *The Detroit Metropolitan Area.* The tri-county area, consisting of Wayne, the county in which Detroit is located, Oakland, and Macomb Counties, covers a land area of 1,952 square miles and contains within it, exclusive of the City of Detroit, some 60 rather highly urbanized municipalities. It is served by the same connective freeway system that runs through the City of Detroit.

Currently, a second east-west cross-connecting freeway is under construction in the vicinity of Eleven Mile Road, beyond the northern border of the City of Detroit. Thus, travel time from the central business district of the City of Detroit to the outer fringes of the urbanized tri-county area does not exceed thirty minutes. The tri-county area is a Standard Metropolitan Statistical Area, as defined by the Federal Government. (IVa 33-36). In 1970-71, 44.2% of the people living in Macomb County worked in Wayne County, and 33.8% of the people living in Oakland County worked in Wayne County. (IVa 37). Approximately 20,000 blacks who live in the City of Detroit worked in the City of Warren, a suburb in Macomb County (IIa 72). Thus, there exists extensive interaction among the residents of the tri-county area.

The entire Detroit metropolitan community, consisting of the tri-county area, has participated in various cooperative governmental services for a period of years. These include: a metropolitan transit system (SEMTA); a metropolitan park authority (Huron Clinton Metropolitan Authority); a metropolitan water and sewer system eminating from the City of Detroit (Detroit Metro Water Department); and a metropolitan council of governments (SEMCOG). (IVa 37-8).

In addition, public educational services are also being provided on a metropolitan cross district basis daily throughout the Detroit metropolitan community. (79a).

The racial characteristics of the tri-county metropolitan area are 18% black and 82% white. Of the total number of blacks living in the tri-county area, 87.2% are contained within the City of Detroit. As a result, the municipalities surburban to the City of Detroit are almost totally white. Although the reason for the concentration of blacks in the urban centers is deemed unascertainable, there is evidence that it is based upon housing discrimination and racism. (Ia156-58) (R. 643).

In the tri-county area there are 86 school districts which bear little relationship to political boundary lines. (Ia 121-7) (IVa

210). Seventeen of these school districts are immediately adjacent to the boundaries of the Detroit school system. (164a). With but few exceptions, all school districts suburban to the City of Detroit have student school populations with racial characteristics which reflect the virtually all white composition of their municipalities. (Ia 121-27).

From 1961-1971 the State of Michigan permitted the construction of 400,000 additional classroom spaces in these suburban school districts, thus building upon the residential racial segregation which had developed between the suburbs and the City of Detroit during that time. (PX P.M. 14, 15).

5. THE COMPELLING NECESSITY FOR A METROPOLITAN REMEDY.

Based upon the foregoing mosaic of facts, the District Court, as affirmed first by a unanimous panel of three and then by six judges of the Court of Appeals for the Sixth Circuit, concluded that the limitation of a desegregation plan to the City of Detroit would result in the further racial identifiability (as black) of some of the schools in the relevant metropolitan community. In this case, the racial identifiability would extend to all the schools within the borders of the City of Detroit. In order to properly remedy the conditions of segregation found in the Detroit school district, particularly in light of the State's *de jure* acts of segregation extending beyond the boundaries of the Detroit school district, the Courts found that within the concepts of *Brown I*, *Brown II*, *Green*, and *Swann*, it was proper to consider a remedy directed to the relevant community – the Detroit metropolitan area.

In approaching the metropolitan hearings, the District Court faithfully adhered to the guidelines enunciated by this Honorable Court in: (1) determining the violation *(Brown I)*; (2) using practical flexibility *(Brown II)*; (3) formulating an effective desegregation remedy *(Green)*; (4) which would prevent resegregation *(Monroe)*; (5) by utilizing the remedial tools of a flexible ratio, reflective of the relevant community as a starting point, and reasonable transportation times and distances *(Swann)*.

Although plans extending to the outermost boundary lines of the tri-county area were proposed (IVa 174-177, IVa 222-223), the District Court, following the guidelines of this Honorable Court, contracted the metropolitan desegregation area to within reasonable distances and travel times, but only so far as to insure that the plan would effectively remedy the violations found and prevent resegregation. (98a-102a). Furthermore, the remedy entailed a minimum of interference with existing administrative state agencies. No restructuring of state government, nor mergers or consolidations of school districts were ordered. (104a-105a).

The District Court directed a panel of experts, including representatives of all local school districts and the State Board of Education, to develop finalized details of the desegregation plan, subject to further review by all parties and the Court. (99a-100a) (Ia 267-273). However, the District Court has not completed its work, due to the appeals filed in this cause.

The Court of Appeals for the Sixth Circuit has affirmed the findings of the District Court as to:(1) the constitutional violations by the State of Michigan; (2) the ineffectiveness of a Detroit-only plan in desegregating the Detroit school district; and (3) the appropriateness of considering a metropolitan remedy. However, the case has been remanded to the District Court to establish the boundaries of an effective remedy and to provide all potentially affected school districts an opportunity to participate in that formulation. (172a-179a).

Much time has passed since this litigation was initiated in the District Court below, yet much remains to be done.

SUMMARY OF ARGUMENT

The Michigan Constitution as interpreted by the Supreme Court of Michigan and as implemented by legislative enactment and the rules of the Michigan State Board of Education clearly establishes that the State of Michigan pervasively controls elementary and secondary education and in so doing has created the local school districts as its instrumentalities and agents. The State's pervasive control of education is evidenced by such examples as its elimination of local school districts *without* voter approval; its transfer of property from one district to another *without* local consent; its power to *remove* local Board members; and its omnipresent participation in the day-to-day operation of local school districts.

The Detroit Board of Education submits: (1) that the Sixth Circuit order allowing Petitioner school districts to participate in hearings on the propriety of a metropolitan plan is more than Petitioner school districts are entitled to since they are not "persons" for the purpose of Fifth Amendment due process; (2) that Petitioner school districts, due to their own inaction, are estopped from claiming a denial of due process; (3) that Fed. R. Civ. P. 19 does not require Petitioner school districts' joinder since they have no substantial interest to protect and are not necessary for complete relief; and, (4) that Petitioner school districts could not contribute anything substantial to the District Court rulings affirmed by the Sixth Circuit.

The Courts below found that the State of Michigan, by its own actions and inaction, violated the Fourteenth Amendment rights of Detroit school children, thereby causing unconstitutional racial isolation in the Detroit school system. The State committed the following acts: (1) it permitted selection of certain school construction sites for the purpose of racial isolation; (2) it failed to provide transportation funds for Detroit school children; (3) it limited the bonding rights of the Detroit school district; (4) it enacted legislation that blatantly prevented the Detroit Board of Education from integrating the Detroit school district; and, (5) it caused black school children from a black suburban school district, without a high school, to be transported into predominantly black Detroit high schools, thereby bypassing nearer all white suburban high schools.

In addition, the Courts below found that the Detroit Board of Education committed acts which caused segregation. As an instrumentality of the State of Michigan, the Detroit Board of Education is bound by the actions of the State. Likewise the Detroit Board's actions are actions of the State. Thus, the Courts below found that whether the constitutional violations were committed by the State alone, or by the State acting through, or in conjunction with, the Detroit Board of Education, the constitutional violations were committed by the State of Michigan. For these reasons it is the State's responsibility to implement an effective constitutional desegregation remedy.

A desegregation remedy limited to the boundaries of the City of Detroit is not effective because it cannot eliminate "root and branch" the vestiges of unconstitutional segregation. Any Detroit-only desegregation plan would leave the Detroit schools racially identifiable and perceived as black. Such a plan would not establish "just schools".

Political boundary lines cannot supercede Fourteenth Amendment rights. In the instant case the relevant community for an effective desegregation plan is the metropolitan Detroit community – a community that is socially, economically, and politically interrelated. There need not be a finding of *de jure* acts on the part of the Petitioner school districts to justify their participation in a desegregation remedy. State action has caused the constitution violation and State created and State controlled school districts can participate in establising an effective remedy.

A metropolitan desegregation plan provides a flexible racial ratio, is educationally sound and logistically practical. Present state law, *without* the necessity for any school district consolidation, permits State implementation of a metropolitan desegregation plan. Moreover, the geography of metropolitan Detroit facilitates the transportation of school children across school district lines in a way that provides reasonable travel times and distances. In many cases cross district transportation would be shorter than present intra-district transportation. Cross district transportation now exists for purposes other than desegregation.

The District Court is not prohibited from ordering the State Defendants to implement a desegregation remedy under the Eleventh Amendment. Eleventh Amendment immunity is not an impediment to judicial action whenever the protection of fundamental constitutional rights is involved.

Respondents Ronald Bradley, *et al.* have not sought to enjoin any Michigan statute of statewide application on the ground that such statute is unconstitutional. For this reason a three judge court is not required.

I.

THE STATUS OF SCHOOL DISTRICTS UNDER MICHIGAN LAW, AS INSTRUMENTALITIES OF THE STATE, WITH RESPONSIBILITY FOR EDUCATION VESTED SOLELY IN THE STATE, MAKES THE STATE RESPONSIBLE FOR PROVIDING AN EFFECTIVE DESEGREGATION REMEDY.

In school segregation cases, this Honorable Court has consistently held that actions of local school boards are actions of the State. *Cooper* v. *Aaron*, 358 U.S. 1, 16-17 (1958). In Michigan, this axiom is of particular importance because, under Michigan law, both from a legal principle and a practical standpoint, local school districts are mere instrumentalities and agents of the State, operating under pervasive state control.

A. The Michigan Constitutional History of State Control Over Education.

Article III of the Northwest Ordinance of 1787, governing the Territory of Michigan, provided in part:

> "Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

With this genesis, Michigan's four Constitutions have clearly established that the public school system in Michigan is solely a state function, pervasively controlled by the state.

The education article of the Constitution of 1835, Article X, provided in part:

> "The Legislature shall provide for a system of common schools . . . ." (Section 3).

> "The governor shall nominate, and by and with the advice and consent of the legislature, a joint vote, shall appoint a superintendent of public instruction, whose duties shall be prescribed by law." (Section 1).

The education article of the Constitution of 1850, Article XIII, provided in part:

> "The legislature shall . . . provide for and establish a system of primary schools . . . ." (Section 4).
>
> "The superintendent of public instruction shall have general supervision of public instruction, and his duties shall be prescribed by law." (Section 1).

Article XIII, Section 9 of the Constitution of 1850 also provided for an elected State Board of Education whose duties were confined to "the general supervision of the state normal schools and its duties shall be prescribed by law."

The education article of the Constitution of 1908, Article XI, provided in part:

> "The legislature shall continue a system of primary schools . . . ." (Section 9).
>
> "A superintendent of public instruction shall be elected . . . who shall have general supervision of public instruction in the state. He shall be a member and secretary of the state board of education." (Section 2).

Thus, for the first time, Michigan provided that the Superintendent of Public Instruction would be elected by the voters rather than appointed by the Governor. As in the preceding Constitution, Article XI, Section 6 of the 1908 Constitution continued the provision for an elected State Board of Education with limited authority, to wit: to supervise . . . "the state normal college and the state normal schools."

B. The Consistent Michigan Supreme Court Interpretation That Local Districts Are Mere Instrumentalities and Agents of the State.

In interpreting the education provisions of the Constitution

of 1850, the Michigan Supreme Court clearly and unequivocally stated that "The school district is a state agency. Moreover, it is of legislative creation ...." *Attorney General, ex rel. Kies* v. *Lowrey*, 131 Mich. 639, 644, 92 N.W. 289, 290 (1902). Specifically, in *Lowrey*, the Michigan Supreme Court held that the legislature of the State of Michigan properly consolidated four school districts without a vote of the electorate in the merged school districts and could transfer the property, as well as the students and teachers, in those districts to the newly created consolidated district. The clear import of the *Lowrey* decision and the breadth of the Constitution of 1850 was recognized by Michigan Supreme Court Justice Grant in his dissent, 131 Mich. at 652, 92 N.W. at 293:

> "If this act be sustained, it must follow that the legislature can absolutely deprive the inhabitants of these school districts of the right to locate their sites and to control their property for school purposes in such manner as they may deem for their best interests. It must follow that the legislature can make contracts for every school district in the State with teachers, can fix the amount each district shall raise by tax, and can determine how much each district must spend in erecting a schoolhouse ...."

Again, interpreting the Constitution of 1850, the Supreme Court of Michigan in *Attorney General* v. *Detroit Board of Education*, 154 Mich. 584, 590, 108 N.W. 606, 609 (1908), adopted the following trial court language which read:

> "Education in Michigan belongs to the State. It is no part of the local self-government inherent in the township or municipality, except so far as the legislature may choose to make it such. The Constitution has turned the whole subject over to the legislature ...."

In interpreting Article XI, Section 9 of the Michigan Constitution of 1908, the Supreme Court of Michigan held:

> "Fundamentally, provision for and control of our public school system is a State matter, delegated to and lodged in the State legislature by the Constitution in a separate article entirely distinct from that relating to local government. The

general policy of the State has been to retain control of its school system, to be administered throughout the State under powers independent of the local government with which, by location and geographical boundaries, they are necessarily closely associated and to a greater or lesser extent authorized to co-operate. Education belongs to the State. It is no part of the local self-government inherent in the township or municipality except so far as the legislature may choose to make it such."

MacQueen v. *City Commission of the City of Port Huron*, 194 Mich. 328, 336, 16 N.W. 628, 629 (1916).

"We have repeatedly held that education in this State is not a matter of local concern, but belongs to the State at large."

Collins v. *Detroit*, 195 Mich. 330, 335-336, 161 N.W. 905, 907 (1917).

"The legislature has entire control over the schools of the State subject only to the provisions above referred to (*i.e.* state constitutional provisions). The division of the territory of the State into districts, the conduct of the school, the qualifications of teachers, the subjects to be taught therein are all within its control."

Child Welfare Society of Flint v. *Kennedy School District*, 220 Mich. 290, 296, 189 N.W. 1002, 1004 (1922).

Finally, pursuant to Article XI, Section 9 of the 1908 Michigan Constitution, the Supreme Court of Michigan held that the State Board of Education could approve, without local consent, a partial transfer of property from one local school district to another and in so doing stated:

"Control of our public-school system is a State matter delegated and lodged in the State legislature by the Constitution. The policy of the State has been to retain control of its school system, to be administered throughout the State under State laws by local State agencies...." *Lansing School District* v. *State Board of Education*, 367 Mich. 591, 595, 116 N.W.2d 866, 868 (1962).

So ingrained is the axiom of pervasive state control of education in Michigan, with local school districts mere agents of the state, that the Michigan Supreme Court in *Lansing* also held:

> "We do not believe plaintiff (the school district) is a proper party to raise the question of whether or not its residents have the right to vote on the transfer.... Plaintiff school district is an agency of the State government and is not in a position to attempt to attack its parent...." *Lansing School District* v. *State Board of Education*, 367 Mich. 591, 600, 116 N.W. 2d 866, 870 (1962)

The present Constitution of the State of Michigan was adopted in 1963. Article VIII thereof is the education article and provides in part:

> "The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. ... (Section 2).
>
> "*State board of education; duties.* Leadership and general supervision over all public education, including adult education and instructional programs in state institutions, except as to institutions of higher education granting baccalaureate degrees, is vested in a state board of education. It shall serve as the general planning and coordinating body for all public education, including higher education, and shall advise the legislature as to the financial requirements in connection therewith.
>
> "*Superintendent of public instruction; appointment, powers, duties.* The state board of education shall appoint a superintendent of public instruction whose term of office shall be determined by the board. He shall be the chairman of the board without the right to vote, and shall be responsible for the execution of its policies. He shall be the principal executive officer of a state department of education which shall have powers and duties provided by law...." (Section 3).

The Constitutions of Michigan (1835, 1850, 1908, 1963) clearly made elementary and secondary education in Michigan the

sole function of the State, controlled by the State. The first three Constitutions of Michigan, 1835, 1850 and 1908 provided for a Superintendent of Public Instruction who was responsible for supervising all education in the State of Michigan. In 1835 and 1850 this Superintendent was appointed. In 1908 he was elected as a constitutional officer.

The only change in this constitutional scheme of sole state function and pervasive state control of education in Michigan made by the Constitution of 1963, was to vest the State Board of Education with the power to supervise all elementary and secondary education in Michigan and to appoint the Superintendent of Public Instruction as its chief administrative officer. 2 Constitutional Convention Official Record 3396 (1961).

Consistent with its past decisions in interpreting the educational article of Michigan's previous Constitution, the Michigan Supreme Court, in interpreting Article VIII, Section 3, of the 1963 Constitution, stated in a "per curiam" opinion:

> "It is the responsibility of the State board of education to supervise the system of free public schools set up by the legislature...." *Welling* v. *Livonia Board of Education*, 382 Mich. 620, 624, 171 N.W. 2d 545, 546 (1969).

The concurring opinion spelled out the change from the Constitution of 1908 to the Constitution of 1963 as it described the transfer of authority over the school system from the legislature to the State Board of Education:

> "By the Constitution of 1963 . . . the framers proposed and the people adopted a new policy for administration of the system. Now the State Board of Education . . . is armed and charged exclusively with the power and responsiblity of administering the public school system which the legislature has set up and now maintains pursuant to Section 2 of the Eighth Article. By Section 3 of the same Article, the board has been directed – not by the legislature but by the people – to lead and superintend the system and become, exclusively, the administrative policy-maker thereof...." 382 Mich. at 625, 171 N.W. 2d at 546-547.

Thus, the Michigan Supreme Court has consistently interpreted all education articles in all of Michigan's four Constitutions as meaning that, in Michigan, education is solely a state function, pervasively controlled by the State and that local school districts are mere administrative conveniences or agents of the State.

This very Court recognized this cardinal axiom of Michigan School law when it, too, affirmed the right of the State Legislature to consolidate four Michigan school districts and transfer the property thereof, without vote of the citizens. *Attorney General ex rel. Kies* v. *Lowrey*, 199 U.S. 233 (1905) *affirming* 131 Mich. 639, 92 N.W. 298 (1902).[1]

Nor is this axiom of Michigan law a judicial fantasy of the Courts. A study prepared for the 1961 Michigan Constitutional Convention,[2] entitled "Elementary and Secondary Education and the Michigan Constitution," noted that Michigan's first constitutional article on education resulted in:

> "... the establishment of a state system of education in contrast to a series of local school systems." Michigan Constitutional Convention Studies, at 1 (1961).

And it is noted that having this background, the Constitutional Convention of 1961 did not change the Michigan Constitution on this point, but only reinforced the legal concept and practice of pervasive state control of education in Michigan.

C. The Practical Examples of Pervasive State-Control Including State Control of Day-to-Day Operations.

Though the Michigan Legislature has established local school districts, these districts are mere agents and instrumentalities of the state, as evidenced by the pervasive state control in many areas, including their existence; their finances; their day-to-day operations.

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[1] Discussed at page 21, *supra*.

[2] The work of the 1961 Convention resulted in the adoption of the Constitution of 1963.

1. *Consolidations, Mergers and Annexations:* The pervasive control of the State of Michigan over its agents (the local school districts) is illustrated by the long and currently accelerating history of school district consolidations, mergers and annexations in Michigan. In 1912 the state had 7,362 local school districts. As of June, 1972, the number of local districts had been reduced by deliberate state policy to 608.[3] Ann. Reports, 1970-71, Michigan Department of Education, at 17; Michigan Department of Education, Michigan Educational Statistics, at 15 (Dec. 1972).

In Michigan, the Superintendent of Public Instruction and the State Board of Education can and have consolidated and merged school districts without the consent of the merged school districts and without the consent of the electors in the districts involved, transferring both property and students to the receiving district.[4] Here are some examples where school district consolidations have been ordered by the State of Michigan without the vote of the electorate:

(a) Four districts in Hillsdale county were merged pursuant to Local Act 315, Mich. Pub. Acts of 1901 as approved in *Attorney General ex rel. Kies* v. *Lowrey*, 131 Mich. 639, 92 N.W. 289 (1902), *aff'd*, 199 U.S. 233 (1905).

(b) The Sumpter school district in Wayne County (the county in which the Detroit school district is located) was dissolved in 1968 by action of the State Board of Education and its schools, property and students were divided among four other school districts in *three* different counties, to wit: Wayne County, Washtenaw County and Monroe County. Minutes of State Board of Education, January 9, 1968; Act 239, Mich. Pub. Acts of 1967 (M.C.L.A. §388.711 *et seq.*).

(c) In 1969, the Nankin Mills School District in Wayne County was eliminated by the State Board of Education

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[3] Just during the period 1964-68, 700 school districts had been abolished. Michigan Department of Education, Michigan Educational Statistics (Dec. 1972)

[4] This, of course, is in addition to mergers, consolidations and annexations by local voter consent (MCLA §340.341 *et seq*).

and its property, schools, students and teachers were divided between the Wayne and Livonia School District. Both districts are in the current desegregation zone. Minutes of State Board of Education, April 23, 1969. Act 239, Mich. Pub. Acts of 1967 (M.C.L.A. § 388.711, *et seq.*

In the last four years the State Legislature has passed legislation providing the emergency financial relief to nearly bankrupt school districts on the condition that if the districts did not abide by the terms of the special legislation they would be merged with other school districts, without local vote, by the State Board of Education. These districts were:

(a) Inkster school district in Wayne County, Act 32, Mich. Pub. Acts of 1968 (M.C.L.A. §388.201 *et seq.*).

(b) Baldwin school district in northern Michigan, Act 255, Mich. Pub. Acts of 1972, (M.C.L.A. §388.211 *et seq.*).

(c) Harper Woods school district in Wayne County adjacent to Detroit, Act 12, Mich. Pub. Acts of 1973 (M.C.L.A. §388.251 *et seq.*).

Whether the mergers and consolidations are permissive (vote of the electorate) or mandatory (without vote of the electorate), the extensive mergers and consolidations in Michigan, including the recent mandatory mergers in Wayne County, Michigan, establish that the local districts are mere instrumentalities and agents of the state whose existence can be altered or destroyed by its creator, the state of Michigan. There is no greater control. This clearly establishes that, at least in Michigan, school district boundary lines are not sacrosanct.

2. *Political Boundary Lines.* With some exceptions, Detroit being the most notable, school district lines in Michigan do not follow either county or municipal boundary lines. For example a number of Petitioner school districts cross municipal boundary

lines, and several cross county lines.[5]

3. *The Transfer of Property.* The Michigan view that local school districts are state agents, pervasively controlled by the State, is no better illustrated than by the State's frequent transfer of property and students without local consent.

The School Code of 1955 authorizes the transfer of property between school districts. M.C.L.A. §§340.461-468. Petitions for such transfers are made to the intermediate school boards, but the statute explicitly provides that the State Board of Education shall act as an appellate body having final authority to confirm, modify, or set aside orders for the transfer of property from one district to another. M.C.L.A. §§340.467, §388.1010(c). By its own count, the State Board of Education has acted to approve or reject transfers involving "hundreds of parcels of land" affecting the geographic composition of local school districts in Michigan. Minutes of the State Board of Education, Oct. 15, 1969, 191. Available statistics show that during 1969-70, for example, 45 property transfer hearings were held and that during 1970-71, 32 property transfer hearings were held. Michigan Department of Education, Ann. Report, 1969-70, at 42; Michigan Department of Education, Ann. Report, 1970-71, at 17. Each of these decisions by the State Board of Education involves a determination whether boundary lines of a local school district shall be altered, and each decision is finalized at the state level by the state agency.

When hearing property transfer appeals, the State Board of Education has frequently overruled the decisions made at the local level. For example, on June 24, 1970, the State Board of Educa-

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[5] At least the following Petitioner school districts are not coterminous with political boundary lines of any municipality or county, to wit: Brandon Schools, Cherry Hill School District, Chippewa Valley Public School District, Crestwood School District, Dearborn Heights School District No. 7, Flat Rock Community Schools, Lakeshore Public Schools, Lakeview Public Schools, the Lamphere Schools, Melvindale-North Allen Park School District, Allen Park Public Schools, School District of North Dearborn Heights, Oxford Area Community Schools, Redford Union School District No. 1, Richmond Community Schools, South Lake Schools, Warren Consolidated Schools, Warren-Woods Public Schools, Wayne-Westland Community Schools, Grosse Pointe Public Schools.

tion transferred certain property from the Benton Harbor City School District to the Coloma Public School District. The record shows that this decision of the State Board of Education was made even though both the Benton Harbor Board of Education and the Berrien Intermediate Board of Education had recommended that the property not be transferred. Minutes of the State Board of Education, Feb. 10, 1971.

This power to transfer property on the part of the State Board of Education, even over the objection of the local school board, has been affirmed by the Michigan Supreme Court. *Lansing School District* v. *State Board of Education*, 367 Mich. 591, 116 N.W. 2d 866 (1962). The power of the State Board is so absolute that the Michigan Supreme Court has also recognized that there are no appeals from the decision of the State Board of Education to transfer property from one local school district to another. *Imlay Township District* v. *State Board of Education*, 359 Mich. 478, 102 N.W. 2d 720 (1960).

In short, under Michigan law local districts must do what the State orders them to do.

4. *The State's Absolute Power of Local Board Removal and To Compel Action.* The state control of education in Michigan is further evidenced by the ultimate authority of the State Board of Education and the State Superintendent of Public Instruction over local school boards:

A. *Power of Removal–*

The Superintendent of Public Instruction and the State Board of Education have the power to remove from office any member of the school board who refuses or neglects to discharge any of the duties of his office. M.C.L.A. §340.253.

B. *Power to Compel–*

The State Board of Education has a statutory duty and the power to compel local school board officers to comply with all laws relating to schools and to refrain from constitutional violations. M.C.L.A. §340.252. Thus, the State Board of Education is authorized to seek mandamus relief in the courts to compel boards of education to perform their clear legal duties. *Johnson* v. *Gibson*, 240 Mich. 515, 215 N.W. 333 (1927).

C. *Power to Act*–

The Superintendent of Public Instruction and the State Board of Education are obligated to do all things necessary to promote the welfare of the public schools and to provide proper educational facilities for the youth of the state. M.C.L.A. §340.252.

5. *State Financing.* The State of Michigan pervasively controls education by contributing an average of 34% of the operating budgets of the 54 school districts included in the original metropolitan desegregation plan. In eleven of the 54 districts such contributions exceed 50% and in eight more they exceed 40%. [6] State aid is appropriated from the General Fund revenues raised through statewide taxation and is distributed annually through the local school districts under a formula devised by the Legislature. *See e.g.*, Act 134, Mich. Pub. Acts of 1971 (M.C.L.A. §388.611).

Though the local school districts also obtain funds from the assessment of local property, the ultimate authority in insuring equalized property valuations throughout the State is the State Tax Commission. M.C.L.A. §§209.101 *et seq.*, 211.34, 211.148. The State's duty to equalize is required by the Michigan Constitution, Article IX, Section 3. This "State equalized valuation" serves as the basis for calculating local revenue yields. *See*, Michigan State Department of Education, *Ranking of Michigan Public High School – School Districts by Selected Financial Data, 1970* (Bulletin 1012, 1971). [7]

6. *Withhold State Funds.* The state's pervasive control over school finances in Michigan could be illustrated no better than by the fact that the State Board of Education and Superintendent of Public Instruction may withhold state aid for failure to operate the minimum school year. M.C.L.A. §340.575. As a result, in

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[6] State Aid Chart, Exhibit I, *infra*, at 126.

[7] The Bursley Bill, Act 1, Mich. Pub. Acts of 1973 (MCLA §340.681), alters the distribution scheme significantly. Pursuant to this enactment, Michigan is now on a "power equalizing system."

1970, funds were withheld from the City of Grand Rapids School District.[8]

7. *The Pervasive State Control of Day-to-Day Operation of Local School Districts.* Though Petitioners, Allen Park and Grosse Pointe would assert that the local boards of education in Michigan are operationally autonomous, this is not only misleading but plainly erroneous under Michigan law. Specific powers of local school district authorities relating to day-to-day management, in terms of control, are restricted by the State as follows:

A. Local districts may hire and contract with teachers, provided the provisions of statutes concerning public employees relations and the provisions of statutes and rules concerning teacher certification and teacher tenure are satisfied.[9]

B. Local districts may determine courses of study, provided these courses include: civics, constitutionalism, health and physical education, communicable diseases, physiology and hygiene, the humane treatment of animals and birds, and drivers' education.[10] If sex education is taught, Department of Education guidelines must be observed.[11]

C. A local district may determine the length of its school term, provided it conducts 180 days of student instruction per school year, as defined by the State Board of Education, unless permission to deviate from the rule is granted by the State Board of Education.[12]

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[8] Michigan School Board Journal (March, 1970). For Attorney General Opinions holding that State aid may be withheld by the State Board of Education from school districts for hiring uncertified teachers, defaulting on State loans and for other reasons, *see*, Op. Atty. Gen. No. 880, 1949-1950 Report of the Attorney General 104 (January 24, 1949, Roth); No. 2333, 1955 Report of the Attorney General 561 (October 20, 1955, Kavanaugh); No. 4097, 1961-62 Report of the Attorney General 553 (October 8, 1962, Kelley).

[9] MCLA § 340.569.

[10] MCLA § § 388.371, .361, .781-.782, 257.811 (c).

[11] MCLA § 340.789.

[12] MCLA § 340.575.

D. A local district may arrange for the transportation of students, but to be eligible for reimbursement from the State the local district must have its bus routes, equipment, and drivers approved by the State Board of Education. [13]

E. A local district may adopt only textbooks listed with the Superintendent of Public Instruction. [14]

F. A local district may suspend or expel from school a pupil guilty of a gross misdemeanor or persistent disobedience, provided the local school board conforms with procedural safeguards promulgated by the State Board of Education. Op. Atty. Gen. No. 4705 (July 7, 1970).

The State Board of Education, operating under its rule-making authority, has direct control over the day-to-day conduct of school affairs in Michigan. State statutes require a school district to conduct a minimum of 180 days of student instruction per school year. M.C.L.A. §340.575. The State Board of Education has determined that the 180 days shall consist of 900 clock hours in each school year and that no school district may operate on a reduced schedule without prior approval of the State Board of Education. R340.14, *Michigan Administrative Code*, 1970-71 A.A.C.S. As shown earlier in this Brief, failure to comply with the state requirement means a loss in state school aid to the district. [15] During the 1970-71 school year, the State Board of Education granted exceptions to the statutory requirement by permitting at least 13 districts to operate on reduced schedules without suffering a loss in state aid. [16] During the school year, the local school boards' administrative flexibility is further re-

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[13] MCLA §388.1171.

[14] MCLA §340.887(1).

[15] See discussion regarding Grand Rapids, *supra*, at 30-31.

[16] Minutes of the State Board of Education, Aug. 11, Aug. 25, Aug. 26, and Nov. 24, 1970.

stricted by the limitations imposed by the State Board of Education as the Board enforces its rules as to state aid payments, [17] child count, [18] the transportation code (including audits of reports of routes and mileage and the qualification of school bonds), [19] financial reports, [20] teacher certification and endorsement of counsellors, [21] teacher tenure, [22] drivers' education, [23] remedial reading programs, [24] vocational education, [25] neighborhood education centers, [26] interscholastic athletics, [27] personality tests, [28] education of pregnant students, [29] eye protective devices, [30] and school lunches. [31] The failure of a local school board to comply with the State Board's rules can result in loss of state aid, special funding, loss of accreditation or removal from office of local board members.

8. *Crossing of School District Lines.* The State's control of education is no more evident than the way the State of Michigan handles special education. In metropolitan Detroit alone, numerous children are transported across school district lines for the purposes of special education. (M.C.L.A. §§340.330-330(a)); (also see 79a-80a).

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[17] R383. 151-R383.156, R383.201-R388.205, R388.221-R388.235, R388.254-R388.256, R388.401-R388.404, R388.411-R388.416, R388.501-R388.506, R388.551-R388.557, *Michigan Administrative Code.*

[18] R340.1-R340.17, *Michigan Administrative Code.*

[19] R340.351-R340.355, *Michigan Administrative Code.*

[20] R340.351-R340.355, *Michigan Administrative Code.*

[21] R390.1101-R390.1167, R390.1301-R390.1305, *Michigan Administrative Code.*

[22] R38.71-R38.123, *Michigan Administrative Code.*

[23] R340.351-R340.436, R388.301-R388.339. *Michigan Administrative Code.*

[24] R388.251-R388.256, *Michigan Administrative Code.*

[25] R395.362-R395.363, *Michigan Administrative Code.*

[26] R388.601-R388.604, *Michigan Administrative Code.*

[27] R340.89-R340.154, *Michigan Administrative Code.*

[28] R340.1101-R340.1107, *Michigan Administrative Code.*

[29] R340.1121-R340.1124, *Michigan Administrative Code.*

[30] R340.1301-R340.1302, *Michigan Administrative Code.*

[31] R340.601-R340.605, *Michigan Administrative Code.*

9. *State Control vis-a-vis the Detroit Board.* Perhaps the court only has to look at the experience of the Detroit Board of Education to realize how persuasive State control is over local school districts:

A. The State of Michigan has told the Detroit Board how to handle its finances and what millage to levy. Act 1, Mich. Pub. Acts of 1973 (M.C.L.A. §340.689); Act 2, Mich. Pub. Acts of 1973 (M.C.L.A. §388.1101 *et seq.*)

B. Prior to 1969, on five occasions, the State Legislature changed the internal structure of the Detroit Board of Education. Act 70, Mich. Pub. Acts of 1962; Act 233, Mich. Pub. Acts of 1869; Act 314, Mich. Pub. Acts of 1881; Act 310, Mich. Pub. Acts of 1889; Act 251, Mich. Pub. Acts of 1913.

C. By passing Act 244, Mich. Pub. Acts of 1969, the State Legislature told the Detroit Board that it must decentralize.

D. When the Detroit Board of Education, in a day-to-day operation, attempted to change student attendance zones for the purpose of integration, the State Legislature suspended the day-to-day decision of the Detroit Board on this point. In doing so, the State legislature also suspended the Detroit Board's efforts at integration by only busing from over-crowded schools if said busing would further integration, and only permitting transfers if the transfers would further integration. §12 of Act 48, Mich. Pub. Acts of 1970 (M.C.L.A. §388.171 *et seq.*).

E. Not only did §12 of Act 48, interfere with the day-to-day operations of the Detroit Board, but the Act also shortened the existing terms of elected Board members M.C.L.A. §388.171 *et seq.*

References to local control and the day-to-day operation of the school board made by Petitioners Allen Park Public Schools, *et al.* and Grosse Pointe Public School System, in their Briefs ignore the basic educational facts of life as they exist in Michigan and are an attempt to mislead this Honorable Court. Petitioner school districts fail to challenge the fact of pervasive state control in Michigan, even in day-to-day matters, in primary and secondary education, and conveniently ignore the following:

1. The Superintendent of Public Instruction and the State Board of Education *can remove local board members without election.*

2. School districts can be consolidated *without consent of the local electorate.*

3. Property can be transferred from district to district *without consent of the local districts.*

4. School districts in many cases *are not coterminous* with other political boundary lines.

5. There is massive state financial aid.

6. Statutes and State Board of Education regulations govern many of the day-to-day operations of local schools.

This Brief only discusses Michigan school law. Although some other states and commonwealths have similar state powers, many do not. For example, in Virginia, the Virginia State Board of Education does not have the power to remove local school board members. Prior to the 1971 Virginia Constitution, the Virginia Board of Education could designate two or more counties or cities as a school division, but could not consolidate the school boards of these political units without their consent. The Constitution of Virginia, Section 132, Section 133 (1902). During this period the Virginia Board of Education effected nine consolidations of county districts, but the consolidations were totally ineffective since the school boards refused to be consolidated. *See,* Hulihen W. Moore, *In Aid of Public Education: An Analysis of the Education Article of the Virginia Constitution of 1971,* 5 U. Richmond L. Rev. 263, 287 (1971); Report of the Commission on Constitutional Revision, 266 (1968). Even under the 1971 Constitution, the Virginia Board of Education is not given the absolute power to consolidate. In short, neither under the old or new Constitutions of Virginia may the Virginia Board of Education, acting alone, consolidate several school districts into a single system under the control of a single board. In Virginia the school districts are coterminous with political boundary lines. In Virginia, the Virginia Board of Education cannot transfer property from one district to another district.

As between Michigan and Virginia there are considerable differences in the amount of state control. However, there is no question about the pervasive state control of education in Michigan. The Court of Appeals for the Sixth Circuit correctly applied Michigan school law, recognizing the pervasive state control over elementary and secondary education in the State of Michigan.

D. Pervasive State Control Means State Responsibility for Violations and Remedies.

The pervasive state control in Michigan has four significant results:

1. Because of pervasive state control, state actions and inactions have resulted in violations of the constitutional rights of the 280,000 children of the City of Detroit.

2. The *de jure* actions of the Detroit Board found by the Courts below are state actions because the Detroit Board is not only an instrumentality and agency of the state under Michigan law, but is a pervasively controlled state agent. The actions of the state agent are the actions of the State, and the State is responsible for those actions. Likewise, the actions of the State bind the Detroit school district as well as all other districts.

3. Because there has been a finding of a constitutional violation, the State has the duty and responsibility to provide a remedy that is effective, eliminates the vestiges of segregation "root and branch", establishes "schools, not a White and a Negro school, just schools," and prevents resegregation.

4. In formulating a remedy which will effectively eliminate unconstitutional racial isolation, the State can and must provide for the crossing of school district lines in an urban metropolitan area where school district lines never have been treated as sacrosanct by the State. In fact, the State has transported students across school district lines and has consolidated school districts for numerous educational and financial purposes. Many of the "Balkanized" school districts, continguous to the Detroit school district, are operated for the administrative convenience of the

State. This is contrasted to typical county-wide southern school districts, where the issue of crossing school district lines is never reached because those states have not chosen to operate their urban educational systems by way of small gerrymandered school districts.

II

PETITIONER SCHOOL DISTRICTS' ALLEGATIONS THAT THEY WERE DENIED DUE PROCESS ARE WITHOUT MERIT.

NEITHER THE STATE OF MICHIGAN NOR ITS POLITICAL SUBDIVISIONS, PETITIONER SCHOOL DISTRICTS, ARE "PERSONS" FOR THE PURPOSE OF FIFTH AMENDMENT DUE PROCESS.

Petitioner school districts contend that their lack of participation in the *de jure* and Detroit-only hearings was a denial of due process under the Fifth Amendment to the United States Federal Constitution. The Fifth Amendment states in pertinent part that "[n]o person shall be . . . deprived of life, liberty, or property, without due process of law . . . . " A series of decisions, however, compel the holding that this section of the Constitution is inapplicable to Petitioner school districts since they cannot be considered as "persons" in the context of the due process clause.

The leading case dealing with the issue of whether or not a state or a state agency is a person entitled to Fifth Amendment due process is *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966). There, the state of South Carolina sought to enjoin enforcement of the Voting Rights Act of 1965, alleging violations of the United States Constitution. This Honorable Court held, *inter alia*, that:

> "The word 'person' in the context of the Due Process Clause of the Fifth Amendment cannot, by any reasonable mode of interpretation, be expanded to encompass the states of the Union, and to our knowledge this has never been done by any court . . . nor does a State have standing as the parent of its citizens to invoke these constitutional provisions against the Federal Government, the ultimate parens patria of every American citizen." 383 U.S. 323-24.

To further illustrate its position the *Katzenbach* Court cited the following language by the highest Louisiana Court:

> "The rights protected by the Fifth Amendment are in favor of persons, not states . . . ." *International Shoe Co.* v.

Cocreham, 246 LA. 244, 266, 164 So.2d 314, 322, n.5 (1964). 383 U.S. 324.

Lower court decisions since *Katzenbach* have uniformly applied the "person" concept as defined in that case. In *Carroll* v. *Finch*, 326 F. Supp. 891 (D.L. Alas. 1971), a state official attempted to compel release to the state of AFDC-UP funds in spite of the state's failure to submit a plan to the federal government. In granting a motion to dismiss, the court, citing *Katzenbach*, held "[t]he states, as states, are not persons in the context of the due process clause of the Fifth Amendment." *Id.* at 894.

In two other federal court cases, individual states openly acknowledged that they could not be considered as "persons" within the context of the due process clause of the Fifth Amendment. *Arizona* v. *Department of Health, Education and Welfare*, 449 F.2d 456, 478 (9th Cir. 1971); *Connecticut* v. *Department of Health, Education and Welfare*, 448 F.2d 209, 212 (2nd Cir. 1971). In both cases, the states rested their procedural arguments on the Tenth Amendment to the United State Federal Constitution. In *Connecticut*, the court denied the state's arguments without deciding the Tenth Amendment issue, while in *Arizona* the court turned down the state's claim stressing that the Tenth Amendment "assuredly does not incorporate a Bill of Procedural Rights for the states." 449 F.2d 479.

Judge Friendly recently discussed the question of whether a political subdivision of a state was entitled to Fifth Amendment due process if its creator, the State, was not. *Aguayo* v. *Richardson*, 473 F.2d 1090 (2nd Cir. 1973), *cert. den. sub. nom.* 42 U.S.L.W. 3406 (1974). Without deciding the issue, Judge Friendly indicated that he leaned toward "non-person" status for cities when he stated that "it may be difficult to see how a city can be a 'person' if its progenitor is not." *Id.* at 1101. He spoke more firmly on whether a political subdivision of a state could raise due process claims on behalf of its citizens: "[A] city would clearly lack standing to raise due process claims (*e.g.*, lack of fair hearing) relating to its citizens." *Id.* at 1101. Thus it is clear that Petitioner school districts would not be the appropriate parties to bring suit for their citizens' due process claims.

The *Katzenbach* doctrine should be applied to all political

subdivisions and agencies of the states as well as to the states themselves. If not, the states could indirectly gain "person" status by delegating their powers to a state agency or political subdivision. It is well-established in Michigan that school districts are creatures of the State possessing only those rights and powers that are delegated to them by the State through legislative action. [32] Thus the Michigan legislature does not have the power to delegate to its school districts a right it does not possess itself, namely, the right to be a "person" for purposes of the due process clause of the Fifth Amendment.

JOINDER OF PETITIONER SCHOOL DISTRICTS IS NOT REQUIRED EITHER TO PROTECT THEIR INTERESTS OR TO PROVIDE ADEQUATE RELIEF.

Joinder of Petitioner school districts under Fed. R. Civ. P. 19 is required only if complete relief cannot be accorded among those already parties or if Petitioner school districts claim an interest relating to the subject of the action and are so situated that its disposition in their absence may, as a practical matter, impair or impede their ability to protect that interest. The Detroit Board of Education contends: (i) that adequate relief may be accorded the existing parties without the joinder of the Petitioner school districts, and (ii) that Petitioner school districts have no substantial interest which may be impaired or impeded by their absence from the District Court proceedings.

Although Petitioner school districts make the conclusory argument that they should have been joined in the proceedings below, the legal analysis contained in Petitioner school districts' briefs is conspicuously devoid of relevant desegregation cases dealing with the issue of joinder.

The leading case in this area is *Lee* v. *Macon County Board of Education*, 267 F. Supp. 458 (M.D. Ala. 1967), *aff'd* 389 U.S. 215 (1967). In *Macon*, the District Court ordered the Alabama State Board of Education to effectuate a statewide plan of desegregation involving numerous local school boards throughout the state. It was argued by the State Defendants[33] that the District Court was proceeding without jurisdiction over indispensable

[32] For a discussion of the agency status of local school districts in Michigan *see*, pages 19-37, *supra*.

[33] Alabama State Board of Education and other state officers.

parties, namely, the local school boards throughout Alabama. The District Court quickly dispensed with that argument by ruling that the Alabama State Board of Education possessed such dominant power over the local school boards as to make the local school boards' presence unnecessary.

> "The argument that this Court is proceeding without jurisdiction over indispensable parties to this litigation, to-wit, local school boards throughout the state, is not persuasive. We are dealing here with state officials, and all we require at this time is that those officials affirmatively exercise their control and authority to implement a plan on a statewide basis designed to insure a reasonable attainment of the equal educational opportunities for all children in the state regardless of their race." 267 F. Supp. 479.

The District Court based its conclusion upon a thorough analysis of the statutory powers resulting in the pervasive control of the Alabama State Board of Education over the local school boards:

> "'. . .Every public school is a state school, created by the state, supported by the state, supervised by the state, through state wide and local agencies, taught by teachers licensed by the state, employed by agencies of the state.'" 267 F.Supp. 466 [quoting *Williams* v. *State*, 230 Alabama 395, 397, 161 So. 507, 508 (1935)].
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> "The control by the State Board of Education over the local school systems is effected and rigidly maintained through control of . . . finances . . . . This control on the part of these defendants over the local boards is all pervasive: it invests in these defendants power over school construction and consolidation, teachers, school transportation and other vital areas in the operation of the public schools throughout the state." 267 F. Supp. 475.
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> * * *

"It cannot seriously be contended that the defendants do not have the authority and control necessary to accomplish this result. Certainly the possibility of losing state funds for failure to abide by and implement the minimum constitution requirements for school desegregation which this opinion and the accompanying decree require will, without any doubt, effect compliance. *Indeed, it is quite clear from the evidence in this case that the local school officials will, through economic necessity if for no other reason, abide by the orders and regulations of these state officials.* . . ." 267 F. Supp. 478. [emphasis added].

The District Court in *Macon* based its conclusion of pervasive state control on specifically enumerated statutory powers. The following comparative analysis shows that the same statutory powers residing in the Alabama State Board of Education, and cited by the District Court in *Macon*, are also statutorily vested in the Michigan State Board of Education and its officers and departments, all of whom were original defendants in the instant case:

	STATE POWER	ALABAMA	MICHIGAN
1.	Training and Certification of Teachers	Title 52, §20	M.C.L.A. §388.1010
2.	State Superintendent Executes Educational Policy	Title 52, §45	M.C.L.A. §388.1014
3.	State Board, Through Superintendent, Exercises General Supervision and Control	Title 52, §14, 31	M.C.L.A. §388.1009 M.C.L.A. §340.251
4.	Equalization of Public School Facilities Throughout the State	Title 52, §33	M.C.L.A. §388.1121
5.	Minimum Content of Course Study	Title 52, §17	M.C.L.A. §340.361-365 M.C.L.A. §388.371
6.	Student Health and Safety	Title 52, §15	M.C.L.A. §340.376 M.C.L.A. §325.511 M.C.L.A. §340.252 M.C.L.A. §340.623
7.	Provision of Vocational Education	Title 52, §451(4)	M.C.L.A. §395.21 M.C.L.A. §395.81 M.C.L.A. §388.1161

	STATE POWER	ALABAMA	MICHIGAN
8.	Partial State Aid for School Transportation Programs and Transportation Route Approval	Title 52, §209	M.C.L.A. §388.1001 M.C.L.A. §388.1175
9.	Allocation of Local School District Funds	Title 52, §§34, 47	M.C.L.A. §388.1101, et. seq.
10.	Regulation and Approval of School Building Construction	Title 52, §15	M.C.L.A. §388.851
11.	School Consolidation	(Surveys and Recommends) 267 F.Supp. 471	(Final Approval by State Board) M.C.L.A. §340.402
12.	Site Approval	267 F.Supp. 471	(For State Bond Approval) M.C.L.A. §388.933

Petitioner school districts have relied heavily on the powers and duties of the local school districts in Michigan as proof of their autonomy and as denial of the existence of pervasive state control. [34] A comparison of the Michigan local school district powers and duties, specifically outlined by Petitioner school districts, [35] with Alabama local school district powers and duties reveals that those powers and duties are virtually identical. [36]

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[34] Brief for Petitioner The Grosse Pointe School System at 48-49; Brief for Petitioners Allen Park Public Schools, *et al.*, at 47-48; Brief for Amici Curiae, Bloomfield Hills Schools District, *et al.*, at 6-7.

[35] *See* footnote 34, *supra*.

[36]

	Local School District Power	Alabama	Michigan
1.	Acquire Real and Personal Property	Title 52, §§71, 161	MCLA §§340.26, 340.77, 340.113, 340.165, 340.192, 340.352
2.	Hire and Contract with Personnel	Title 52, §§86, 196	MCLA §§340.569, 340.574

[36] Continued

Local School District Power	Alabama	Michigan
3. Levy Taxes for Operations	(Election) Title 52, §254	MCLA §340.563
4. Borrow Against Receipts	Title 52, §243	MCLA §340.567
5. Determine Length of School Terms	(Opening Day) Title 52, §89	MCLA §340.575
6. Control Admission of Non-resident Students	Title 52, §61(5)	MCLA §340.582
7. Determine Courses of Study	Title 52, §§87, 120, 186	MCLA §340.583
8. Provide Kindergarten Program	Title 52, §162	MCLA §340.584
9. Establish and Operate Vocational Schools	Title 52, §§385, 388, 398(1)	MCLA §340.585
10. Offer Adult Education Programs	(Special Schools) Title 52, §173	MCLA §340.586
11. Establish Attendance Areas	Title 52, §§314, 95	MCLA §340.589
12. Arrange for Transportation of Non-resident Students	Title 52, §61(4)	MCLA §340.591
13. Acquire Transportation Equipment	Title 52, §161(1)	MCLA §340.594
14. Receive Gifts and Bequests	Title 52, §§71, 160	MCLA §340.605
15. Employ an Attorney	Title 52, §99 Rep. Atty. Gen. 1936-38, page 95	MCLA §340.609
16. Make Rules and Regulations for the Operation of Schools	Title 52, §§73, 158, 179	MCLA §340.614
17. Cause Authorized Millage to be Levied	Title 52, §§246,254	MCLA §340.643(a)
18. Acquire Property by Eminent Domain	Title 52, §§99, 168	MCLA §340.711 *et seq.*
19. Approve and Select Textbooks	Title 52, §433(9)(e)	MCLA §§340.882, 340.887
20. Care and Custody of Schools and Property	Title 52, §§180, 181, 72, 73	MCLA §§340.578, 340.614
21. Sue or Be Sued	Title 52, §§99, 161	MCLA §340.352

Pervasive state control was found to exist in Alabama from a comparison of powers possessed by the State Board of Education with those of the local school boards. The District Court in *Macon* held that this pervasive state control obviated the necessity to join the local school boards. Inasmuch as the Detroit Board of Education has shown that the educational powers present at the state and local levels in Michigan correspond with those of Alabama, the *Macon* standard would demand a denial of Petitioner school districts' claim for relitigation of previously decided issues.

Two recent Pennsylvania school desegregation cases, *Husbands* v. *Commonwealth of Pennsylvania*, 359 F. Supp. 925 (E.D. Penn. 1973), and *Hoots* v. *Commonwealth of Pennsylvania*, 359 F. Supp. 807 (W.D. Penn. 1973), held that surrounding school districts, other than those deemed segregated, were not eligible for joinder under Fed. R. Civ. P. 19 even though their composition and boundaries could have been altered as a result of the Pennsylvania State Board of Education's implementation of a court ordered desegregation plan.

In *Husbands, supra*, the Pennsylvania State Board of Education, through power granted to it by the Pennsylvania Legislature, had reorganized certain school districts. The District Court ruled that the reorganization had resulted in *de jure* segregation. The Plaintiffs [37] sought a remedy to the *de jure* segregation by suing the Commonwealth of Pennsylvania and the Pennsylvania State Board of Education. The Pennsylvania State Defendants contended that the complaint should have been dismissed for failure to join surrounding school districts who, although not segregated, would have participated in the remedy. The Court stated:

> "The crucial question is whether these other school districts do, in fact, claim an interest relating to the subject of the action. There is little doubt that these school districts may be affected by the results of this action. However, this does not mean that they necessarily have rights cognizable under Federal Rule of Civil Procedure 19(a)(2). . . . *The districts played no direct role in their formation and they have no proprietary of possessory rights therein.* Nor would the ab-

[37] Black students and their parents.

sence of these districts prevent this court from ordering complete relief under Federal Rule of Civil Procedure 19 (a) (1)." 359 F. Supp. 937. [emphasis added].

In *Hoots, supra*, Plaintiffs[38] also sought a remedy for racial segregation caused by the creation of certain local school districts. The District Court refused to join, under Fed. R. Civ. P. 19, surrounding school districts who although not segregated would have been affected by the desegregation plan. The District Court found that the surrounding school districts were not needed to provide adequate relief to the parties nor to protect any substantial interest which they might allege.

In response to the allegation that surrounding school districts were necessary to accord complete relief, the District Court stated:

> "The absence of the surrounding school districts does not affect the complete relief available to existing parties. The power to draw school district boundaries rests solely with the Commonwealth of Pennsylvania and the Pennsylvania State Board of Education. Local School Districts have no power or control over their own boundaries. They can be altered at any time by the Commonwealth." 359 F. Supp. 821.
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> * * *
>
> "While surrounding school districts may be concerned with the results of this litigation and even be affected by it, this does not require their joinder under Fed. R. Civ. P. 19." 359 F. Supp. 821-22.

The District Court concluded that the absent school districts had no interest to protect in the litigation.

> *"The surrounding school districts have no legal right to have their existing boundaries maintained,* and consequently, they have no legal interest under provisions of Fed. R. Civ. P. 19 which can be affected by the outcome of this litigation." 359 F. Supp. 821. [emphasis added].
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[38] Black students and their parents.

The statutory powers vested in the Pennsylvania State Defendants in *Husbands* and *Hoots* are similar to those statutory powers vested in the Michigan State Defendants in the instant case. [39] Moreover, the statutory powers vested in Pennsylvania local school districts are virtually identical to those statutory powers vested in Michigan local school districts.[40] Given the striking parallels between Pennsylvania and Michigan statutory arrangements, the *Husbands* and *Hoots* holdings are direct precedent for a like holding here, *viz.*, that Petitioner school districts do not have a substantial interest in the proceedings below, neither are they necessary for relief.

In another school desegregation case, *Evans* v. *Buchanan*, 256 F. 2d 688 (3rd Cir. 1958), the Delaware State Superintendent of Public Instruction and the Delaware State Board of Education sought to avoid an injunction which ordered them to develop a plan of desegregation for the Delaware School System. They argued that the State Board of Education was without power to force the local school boards to comply with a court ordered remedy.

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[39] The State of Michigan has the power to draw school district boundaries as does the Commonwealth of Pennsylvania. In addition, M.C.L.A. §388.711 gives the Michigan State Board of Education ultimate control over alteration of local school district boundaries. For the District Courts' discussion of Pennsylvania State powers *see Husbands* v. *Commonwealth of Pennsylvania*, 359 F. Supp. 925, 937 (E.D. Penn. 1973) and *Hoots* v. *Commonwealth of Pennsylvania*, 359 F. Supp. 807, 811-12 (W.D. Penn. 1973). For a general discussion of Michigan State powers, *see* pages 19-37, *supra*.

[40]

Local School District Power	Pennsylvania	Michigan
1. Acquire Real and Personal Personal	Title 24, §§7-703, 8-801	MCLA §§340.26, 340.77, 340.113, 340.165, 340.192, 340.352
2. Hire and Contract with Personnel	Title 24, §11-1121	MCLA §§340.569, 340.574
3. Levy Taxes for Operations	Title 24, §5-507	MCLA §340.563
4. Borrow Against Receipts	Title 24, §6-640	MCLA §340.567
5. Determine Length of School Terms	Title 24, §15-1504(a)	MCLA §340.575
6. Control Admission of Non-resident students	Title 24, §§13-1313, 13-1316	MCLA §340.582

The Third Circuit found this argument inapposite to Delaware School law. The Court based its opinion on general powers and duties[41] residing in the State Board of Education and the State Superintendent, instead of relying upon a step-by-step outline of specific powers which would provide a formal remedy. The Delaware State Defendant's general controlling powers, in and of themselves, convinced the Court that the Delaware State Defendants could provide the remedy requested.

[40] Continued

Local School District Power	Pennsylvania	Michigan
7. Determine Courses of Study	Title 24, §15-1512	MCLA §340.583
8. Provide Kindergarten Program	Title 24, §5-503	MCLA §340.584
9. Establish and Operate Vocational Schools	Title 24, §18-1806	MCLA §340.585
10. Offer Adult Education Programs	Title 24, §§19-1902, 19-1922	MCLA §340.586
11. Establish Attendance Areas	Title 24, §13-1310	MCLA §340.589
12. Arrange for Transporation of Non-resident Students	Title 24, §13-1364	MCLA §340.591
13. Acquire Transportation Equipment	Title 24, §§13-1361, 13-1363	MCLA §340.594
14. Receive Gifts and Bequests	Title 24, §2-216	MCLA §340.605
15. Employ an Attorney	*Cf.* Title 24, §2-213	MCLA §340.609
16. Make Rules and Regulations for the Operations of Schools	Title 24, §5-510	MCLA §340.614
17. Cause Authorized Millage to be Levied	Title 24, §§6-652, 6-672	MCLA §340.643(a)
18. Acquire Property by Eminent Domain	Title 24, §§7-703, 7-721	MCLA §340.711 et seq.
19. Approve and Select Textbooks	Title 24, §§8-801, 8-803	MCLA §§340.882, 340.887
20. Care and Custody of Schools and Property	Title 24, §7-701	MCLA §§340.578, 340.614
21. Sue or be Sued	Title 24, §2-213	MCLA §340.352

[41] *E.g.*, the power to determine the educational policies of the state, the authority to adopt rules and regulations for the administration of the public school system, the duty to provide a uniform equal and effective system of public schools throughout the state, general control and supervision over the public schools of the state, and the power to decide all controversies and disputes involving the administration of the public school system. 256 F.2d 693-94.

As was seen in the earlier analysis of *Macon* and on pages 19-37, *supra*, the Michigan State Board of Education and its officers and departments possess general powers of supervision and control similar to those of the Delaware State Defendants in *Evans*. Moreover, the Michigan State Board of Education and its officers and departments possess certain specific powers which would insure compliance with a court ordered state implemented plan of desegregation.

One such specific power is the *power* of the Michigan State Board of Education and the Department of Education, in conjunction with the Michigan State Treasurer, *to disburse or withhold state aid to the local school districts.*[42] The Michigan Legislature has established a system of distributing state aid whereby the State Board of Education promulgates rules and regulations as to the proper amount of funding local school districts should receive.[43] The Michigan Department of Education collects informational returns from the local school districts in order to ascertain the amount to be disbursed to each individual school district.[44] If the submitted return is defective, the Department of Education will make an apportionment on the basis of any evidence that is available to it.[45]

Upon the Department of Education's determination of the amount of state aid allocable to the local school boards, a statement of amount is prepared by the Department of Education for each local school district and is delivered to the State Treasurer.[46] The State Treasurer then prepares a warrant for the amount stated in favor of the individual school district. This warrant is then delivered to the individual school district treasurer.[47] Except for special allotments, the categories on which state aid may be expended by school districts are limited to the following: the payment of teachers' salaries, tuition, transportation, lighting, heating and ventilation, water service, and the purchase of textbooks or other supplies.[48] In addition, no more

[42] MCLA §388.1101 *et seq.*

[43] MCLA §388.1107.

[44] MCLA §388.1113.

[45] MCLA §388.1114.

[46] MCLA §388.1117.

[47] MCLA §388.1117.

[48] MCLA §388.1118.

than five percent of state aid may be expended on capital costs or debt service.[49] In this regard, the Department of Education is entrusted with the responsibility of determining the reasonableness of the above expenditures.[50] In the event that the Department of Education finds an unreasonable expenditure of state aid, it may withhold from any local school district the apportionment otherwise due for the fiscal year following discovery of the violation.[51] Thus, the steady flow of funds from the State Treasury to the local school districts depends upon compliance by the local school districts with rules promulgated by the State Board of Education, and upon standards of reasonable spending as determined by the Department of Education.

The power of the State Board of Education and Department of Education to funnel state aid to the local school districts is identical with the all important "power of the purse" discussed in *Macon*:

> "It cannot seriously be contended that the Defendants did not have the authority and control necessary to accomplish this result. Certainly the possibility of losing state funds for failure to abide by and implement the minimum constitutional requirements for school desegregation which this opinion and the accompanying decree require will, without any doubt, effect compliance." 267 F.Supp. 478.

If the Michigan State Defendants in the instant case are ordered to promulgate a metropolitan plan of desegregation, they could effectively compel Petitioner school districts' compliance by suspending state aid to defiant local school districts. Without state aid many defiant local school districts would approach insolvency[52] since there is a limit on the amount of millage they can levy.[53] Compliance with the State Board of Education's desegregation mandate would ensue, or defiant districts would find themselves in the position of having to borrow funds. Before a Michigan local school district can borrow funds, it must obtain the

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[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] State Aid Chart, Exhibit I, *infra*, at 126.

[53] MCLA §211.203.

approval of the Department of Education.[54] The District Court could order the Department of Education to disapprove all borrowing by any local school district which refuses to comply with the court ordered plan of desegregation. This would block any defiant school district from obtaining alternative external funds to replace suspended state aid payments.[55]

Should the District Court approve a metropolitan desegregation remedy requiring school bussing, the Michigan Legislature has provided yet another tool by which the Department of Education could effectuate the remedy. Under M.C.L.A. § 388.1171, the State will pay up to 75% of the actual cost of transporting pupils who live farther than one and one-half miles from school. However, this allotment is contingent upon the Department of Education's approval of the bus route. If a local school board refuses to alter its bus routes in accordance with a state imposed plan of desegregation, the Department of Education could disapprove all alternative bus routes, thus suspending the local school district's state transportation funds.

Perhaps the greatest power to effectuate a remedy resides with the State Superintendent of Public Instruction. M.C.L.A. § 340.253 provides that the State Superintendent may remove any local board member who..."shall persistently and without sufficient cause refuse or neglect to discharge any of the duties of his office." Those duties could be interpreted to include compliance with a court ordered state imposed plan of desegregation.[56] Persistent refusal to comply with the court ordered remedy by any local school board could result in that board's dismissal.

In the words of the District Court for the Western District of Michigan:

> "The State Board of Education and the Superintendent of Public Instruction have ample administrative and judicial

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[54] MCLA §388.1234.

[55] The State Board of Education has the additional power to reorganize a school district which is insolvent and indebted to the State. State Board of Education action in such cases is final MCLA §388.711 *et. seq.*

[56] *Cf.* MCLA §340.355.

process to compel compliance with the mandates of the Fourteenth Amendment and the Constitution of the State of Michigan to secure equal protection of law and equal educational opportunity for Black children, or for any children, who may be denied such educational opportunities by reason of their religion, race, creed, color or national origin." *Oliver* v. *Kalamazoo Board of Education*, Civ. No. K-88-71 C.A. (W.D. Mich., filed October 4, 1973) Slip Op. 86.

THE COURTS BELOW ACTED IN A MANNER WHICH WOULD AVOID UNNECESSARY DELAY AND STILL PROTECT ANY COGNIZABLE INTEREST OF PETITIONER SCHOOL DISTRICTS

Petitioner school districts contend that they have been denied due process by the District Court, and are being denied such under the conditions of remand imposed by the Sixth Circuit. Before addressing the legal issues involved, a review of the chronology of events before the District Court will clearly demonstrate that the claim denial of due process in this litigation is the result, for the most part, not of the conduct of the District Court, but of Petitioner school districts' own acts and omissions during the course of the proceedings below.

A. Chronology of Trial Court Proceedings Surrounding Petitioner School Districts' Intervention.

On *September 27, 1971*, the District Court rendered its findings of Fact and Conclusions of Law on the issue of acts of *de jure* segregation committed by the State of Michigan and the Detroit Board of Education. *Bradley* v. *Milliken*, 338 F. Supp. 582 (E.D. Mich. 1971). *On October 4, 1971*, the District Court ordered the Detroit Board of Education to submit, within sixty days, Detroit-only plans for desegregation of the Detroit public schools and further ordered all other parties to submit, within one hundred and twenty days, metropolitan plans of desegregation. A written order to that effect was entered by the District Court on *November 5, 1971*. (1a3).

As had all prior aspects of the litigation, the findings and the order of the District Court received widespread news media cover-

age throughout the Detroit metropolitan area and the State of Michigan.[57] Yet it was not until *February 10, 1972* (Ia4), three months after the District Court's November 5, 1971 order, that any Petitioner school district filed a motion for intervention under Fed. R. Civ. P. 24. [58] On the following Monday, *February 14, 1972,* the District Court promptly noticed the motions then pending for a hearing on *February 22, 1972.* (Ia4). Within four days of the issuance of that notice Petitioners Allen Park Public Schools, *et al.*, [59] Southfield Public Schools and Royal Oak School District filed similar motions to intervene. (Ia4-5).

The speed with which these school districts responded to the District Court's notice is indicative of the close scrutiny given to every phase of the proceedings below by suburban school districts throughout the Detroit metropolitan area. Petitioner school districts forebore earlier attempts to intervene on the issue of segregation because of a realization on their part that their alleged interest in the proceedings below did not materialize until metropolitan plans of desegregation had been filed by Petitioners William G. Milliken, *et al.*[60] As was stated by Petitioners Allen Park Public Schools, *et al.*, in their "Brief In Support Of Motion To Intervene," dated February 16, 1972:

> "... Certain of these plans, if adopted and implemented by order of this Court, would substantially and materially affect Intervenors by virtue of the effect of said plans upon the responsiblity of said Intervenors for the education of the pupils within their respective school districts and the expenditure of funds in connection therewith. Page 3.
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[57] As evidence of the general public's awareness of the proceedings in this litigation, a motion to intervene was filed on *December 2, 1972* by Kerry and Coleen Green, *et al.* representing a class of school children residing in and attending suburban school districts. (Ia4).

[58] The first motion was that of Petitioner Grosse Pointe Public School System on, *February 10, 1972.* (Ia4).

[59] Representing some forty suburban school districts.

[60] Certain suburban school districts have refrained entirely from intervening in this action. Instead they have sought direct relief from the Sixth Circuit and this Honorable Court so as to circumvent the powers exercised by the District Court in implementing an effective desegregation plan. *Bloomfield Hills School District* v. *Roth; West Bloomfield Hills School District* v. *Roth;* and, *Birmingham School District* v. *Roth,* 410 U.S. 954 (1973).

"Whether an application for intervention is timely is a matter committed to the sound discretion of the Court. (citations omitted). At the outset of the instant proceeding and throughout the hearings on the issue of *de jure* segregation within the City of Detroit School District there was no indication that the proceeding would affect the rights and interests of Intervenors and no grounds or occasion for their seeking leave to intervene.

"With the very recent submission of so-called Metropolitan Plans of Desegregation for consideration by the Court, which plans would affect Intervenors, it is essential that Intervenors' interests be adequately represented by their presence in the proceedings. No hearings have been held with respect to the plans recently submitted to the Court and none of the existing parties to the litigation will be harmed or prejudiced by the admission of Intervenors to the proceedings." [citation omitted]. Pages 4-5.

Thus, the above statement concedes that Petitioner school districts had no interest to protect prior to the District Court's request for submission of metropolitan plans of desegregation.

The hearing on all motions for intervention filed by Petitioner school districts was held, as scheduled, on *February 22, 1972.* At that time the District Court also informed all parties and movants, through their counsel then assembled in open court, that the hearings on Detroit-only desegregation remedies were scheduled to commence on *March 14, 1972.* (Ia5). A decision on the motions to intervene was deferred pending submission of reasonably specific desegregation plans to the District Court. (Ia5). On *March 7, 1972,* the District Court formally notified[61] all parties and movants that:

"1. Hearing on desegregation intra-city plans will proceed, beginning at 10:00 a.m., Tuesday, March 14, 1972.

"2. Recommendations for 'conditions' of intervention to be submitted not later than 10:00 a.m., March 14, 1972.

[61] The Proof Of Mailing, dated *March 6, 1972,* indicates that such notice was sent to counsel of record for all parties and movants for intervention. (Ia199-200).

"3. Briefs on propriety of metropolitan remedy to be submitted not later than March 22, 1972.

"4. Tentatively and unless the Court rules otherwise, hearings on metropolitan remedy to commence 10:00 a.m., March 28, 1972." (Ia203).

Although petitioner school districts were fully aware, as of *February 22, 1972*, of the scheduled hearings on Detroit-only desegregation remedies, commencing *March 14, 1972*, no recommendations for conditions of intervention were filed by them until *March 14, 1972*.[62] (Ia5). Evidently petitioner schoo. districts felt no compunction to respond affirmatively prior to that deadline.

On *March 15, 1972* the order granting Petitioner school districts the right to intervene was filed and entered on the docket. (Ia6). The hearings on Detroit-only desegregation plans began on *March 14, 1972* and continued through *March 21, 1972*. (Ia5-6). *Petitioner school districts failed and/or refused to participate in the hearings on Detroit-only desegregation plans*, under the conditions of intervention. No action in response to the conditions of intervention was taken by Petitioner school districts until *March 21, 1972*, the final day of the hearings on the appropriateness of Detroit-only desegregation remedies. (Ia6). At that time Petitioner school districts filed objections to the conditions of intervention imposed upon them by the District Court. (Ia6-7) [63] Petitioner school districts made their first appearance at the District Court hearings as intervenors on *April 4, 1972*, the first day of hearings

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[62] *See*, letter of counsel for Petitioner Grosse Pointe Public School System, dated March 13, 1972, filed of record on March 14, 1972. (Ia 201-02).

[63] Indeed, Southfield Public Schools did not file its objections to the conditions of intervention until *April 4, 1972*. (Ia 7).

on metropolitan desegregation remedies. (1a7).[64]

The Sixth Circuit has vacated the District Court's "Ruling on Propriety of Considering a Metropolitan Remedy to Accomplish Desegregation of the Public Schools of Detroit" dated March 24, 1972 and the District Court's "Ruling on Desegregation Area and Development of Plan" dated June 14, 1972. In addition, Petitioner school districts have been joined under Fed. R. Civ. P. 19 and have been permitted to offer additional evidence, and to cross-examine available witnesses who previously have testified on the above issues.[65] As to the matters contained in its "Ruling on Issue of Segregation" dated September 27, 1971, and its "Finding of Fact and Conclusions of Law on Detroit-Only Plans of Desegregation," dated March 28, 1972, the District Court is not required to receive any additional evidence. The Sixth Circuit ruled that the finding of *de jure* segregation in the Detroit School System and the finding of the inadequacy of the Detroit-only plans were "supported by substantial evidence." (178a).

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[64] Petitioner school districts also contend that the speed with which the District Court proceeded during the remedial stages of the litigation prevented them from adequately preparing for meaningful participation during the period involved. As the textual chronology indicates, from the date of the filing of the Complaint in this action by Respondents Ronald Bradley, *et al.*, on *August 19, 1970* (1a1) until the period during which the District Court was involved in hearings to determine a meaningful desegregation remedy in *March* and *April 1972*, one complete school year had elapsed and a second was nearing its completion. The District Court had been instructed, quite early in the litigation, by the Sixth Circuit, to proceed as expeditiously as possible. *Bradley* v. *Milliken*, 438 F.2d 945 (6th Cir. 1971). Once a violation was found, it was the duty of the District Court to move as expeditiously as possible to remedy the constitutional enfringement of the rights of Respondents, Ronald Bradley, *et al.*, and yet keep the disruption of the educational process at a minimum by formulating and implementing a desegregation plan prior to the start of a particular school year.

[65] Under Fed. R. Civ. P. 21, which modifies joinder powers under Fed. R. Civ. P. 19, "[p]arties may be dropped or added by order of the Court . . . at any stage of the action on such terms as are just." Thus the Sixth Circuit had the procedural authority to join Petitioner school districts after the Detroit-only hearings, if in fact, those Petitioner school districts were even entitled to joinder.

B. By Their Own Admission Petitioner School Districts Had No Substantial Interest in the *De Jure* Hearings and Could Have Made No Contribution to Them.

The Sixth Circuit has upheld the District Court ruling on the finding of *de jure* segregation in the Detroit School System. At the trial and on appeal, the Detroit Board of Education and the Michigan State Defendants vigorously defended against the allegations of *de jure* segregation. The Detroit Board of Education and the Michigan State Defendants, both accused of *de jure* segregation, fully utilized all information and witnesses necessary to adequately defend on that issue. Yet both the District Court and the Sixth Circuit concluded that the finding of *de jure* segregation in the Detroit School System was "supported by substantial evidence". (178a).

Petitioner school districts now allege that they should have been joined as parties defendant for proper adjudication of the issue of *de jure* segregation in the Detroit School System. They raise this objection in spite of evidence which substantiates their previous intent not to litigate this issue at the trial court level. For example, Petitioner Grosse Pointe Public School System, in a letter to the District Court dated March 13, 1972 (Ia 201-02), stated:

> "2) It is not the intention of The Grosse Pointe Public School System to reopen any matters previously adjudicated by the Court except as the same may directly affect the interests of The Grosse Pointe Public School System. *Specifically, we do not wish to litigate the question of de jure segregation in the Detroit Public School System. We intend to approach this litigation in a positive and constructive manner and to minimize any administrative problems which may be created by the addition of a number of additional counsel to the proceedings.*" [emphasis added].

This desire was proper since the Grosse Pointe Public School System could have added nothing to those hearings. Petitioners Allen Park Public Schools, *et al.*, made a similar admission in their "Brief In Support Of Motion To Intervene," dated February 16, 1972:

> ". . . At the outset of the instant proceeding and throughout the hearings on the issue of *de jure* segregation within the

City of Detroit School District there was no indication that the proceeding would affect the rights and interests of Intervenors and no grounds or occasion for their seeking leave to intervene." Page 4.

Thus, at the time of their intervention Petitioner school districts conceded that the *de jure* hearings were properly conducted without their presence.

Petitioner school districts now seek relitigation of the issue of *de jure* segregation in the Detroit School System. Yet in their Briefs before this Honorable Court, none of them indicate what new information they would provide on that issue. Moreover, none of them have delineated their objections to evidence already introduced in the *de jure* hearings. This conspicuous omission, coupled with Petitioner school districts' previous admissions, clearly indicates that their purpose for *de novo* hearing of the issue of *de jure* segregation is to delay an effective remedy for segregation and not to protect a substantial interest.

C. As Evidenced By Their Voluntary Refusal To Participate As Intervenors, Petitioner School Districts Had No Substantial Interest in the Detroit-only Hearings and Could Have Made No Contribution To Them.

The Sixth Circuit has upheld the District Court ruling on the inadequacy of a Detroit-only remedy. Petitioner school districts now allege that the conditions of intervention imposed by the District Court were too severe and that they should have been joined as parties defendant, instead of intervenors, during the Detroit-only hearings. The Detroit Board of Education contends, however, that Petitioner school districts are estopped from alleging any denial of due process as a result of their own voluntary inaction at the Detroit-only hearings.

Reference to the conditions of intervention ultimately imposed by the District Court, dated and filed March 15, 1972, (Ia205-07)[66] indicates that the District Court's order was in

[66] The conditions limited petitioner school districts to questions which directly affected their interests, (Ia 205-07), but also assured that such intervention would "minimize any administrative problems which may be created by the addition of a number of additional counsel to the proceedings." (Ia 202) *See* n. 62, *supra*.

substantial conformity with the conditions of intervention initially acceded to by Petitioner school districts.[67] More pertinent, however, is the fact that the Sixth Circuit ruling exactly parallels the request made by Petitioner Grosse Pointe Public School System in its letter of March 13, 1972:

> "1) The Grosse Pointe Public School System has sought intervention for two principal reasons, which are:
>
> a) To participate in the litigation of the question of the legal propriety of the implementation of a metropolitan plan for the desegregation of the School System of the City of Detroit which would directly involve The Grosse Pointe Public School System,
>
> b) to offer objections, modifications or alternatives to metropolitan plans of desegregation presented to the Court by other parties; insofar as such plans affect the interests of The Grosse Pointe Public School System." (Ia 201-02).

As we have already shown, Petitioner school districts voluntarily chose not to participate as intervenors in the Detroit-only proceedings. Moreover, their objections to the conditions of intervention were not filed until *March 21, 22 and April 4, 1972,* [68] (Ia6-7), several days after the District Court's ruling and order granting intervention *(March 15, 1972)* and several days after the start of hearings on Detroit-only desegregation plans. Had Petitioner school districts truly been concerned with the claimed denial of due process resulting from the conditions of intervention imposed by the District Court, a prompt response to the ruling and immediate participation in the Detroit-only proceedings would have been appropriate. Instead, Petitioner school districts did not participate at all until the hearings on metropolitan plans and they did not take any further action on their objections to the

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[67] It should be noted that until the District Court found that a Detroit-only plan was inadequate, the defendants present at the Detroit-only hearings were sufficient to provide a remedy. Had a Detroit-only remedy been determined as sufficient, the Michigan State Defendants and the Detroit Board of Education could have provided a complete remedy to the segregated conditions without any input from the surrounding school districts.

[68] See, n. 63, *supra.*

District Court's conditions of the intervention.[69]

From the record, it is clear that several prominent expert witnesses testified at the Detroit-only hearings. (IVa 1-140). Petitioner school districts have not indicated what additional relevant evidence they could add to the Detroit-only hearings. Most likely they would have supplied more witnesses to rediscuss the same sociological theories and research already presented to the District Court. This fact, coupled with Petitioner school districts' voluntary refusal to participate in the Detroit-only hearings as intervenors, supports the Sixth Circuit's decision. Relitigation of the Detroit-only hearings would only result in the indefinite delay of an effective remedy for segregation in the Detroit school district.

D. The Federal Courts Are Loath To Reopen Complex Litigation Where Such Action Would Lead To Delay and the Waste of Judicial Resources.

Petitioner school districts now ask this Honorable Court to overburden the District Court and the previous parties hereto with *de novo* litigation on issues for which the Petitioner school districts are unable to add any substantial information. In several cases the federal courts have denied joinder under Fed. R. Civ. P. 19 where the effect of such joinder would nullify prior proceedings – an outcome which petitioner school districts presently seek.[70]

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[69] For example, no interim appeal, either as of right, under Rule 4 of the Federal Rules of Appellate Procedure, or by permission, under Rule 5 of the Federal Rules of Appellate Procedure, was taken or even attempted by Petitioner school districts. In fact, no further action was taken with regard to the conditions of intervention until the appeal to the Sixth Circuit, granted on *July 20, 1972.*

[70] Fed. R. Civ. P. 19 was rewritten in 1966 to enable the trial court to shape a decree providing the maximum remedy which the facts permit and the public interest demands without infringing upon substantial interests of absent persons. Fed. R. Civ. P. 19 is not to be interpreted in a formalistic manner but rather in a way which provides substantial justice after a pragmatic analysis of the facts of each case. Cohn, The New Federal Rules of Civil Procedure, 54 Geo. L.J. 1204, 1206-07 (1966); *Provident Tradesmens Bank & Trust Co.* v. *Patterson*, 390 U.S. 102, 116 n. 12 (1968).

In *Fair Housing Development Fund Corp.* v. *Burke*, 55 F.R.D. 414 (E.D. N.Y. 1972), a lawsuit alleging racially restrictive zoning in the Town of Oyster Bay, Long Island, the District Court refused to join certain villages (and their respective Mayors) which were situated within the geographic boundaries of the Town of Oyster Bay. The court emphasized that the zoning powers of the Town had been properly delegated to the Town Board by the State of New York (as the State of Michigan has delegated broad educational powers to the Michigan State Board of Education) and that the proposed village defendants were not necessary for full relief. In addition, the court pointed out that,

> ". . . an enormous amount of pretrial discovery has been undertaken, independent research and investigation have been conducted, and several procedural issues have been litigated. An enormous amount of legal energy has been expended on issues between the present parties, and only after a year's work have the issues begun to be narrowed and defined. To join the proposed defendants at this state of the case would be unwise.
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> * * *
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> "*The trial and date of ultimate resolution of the issues of fundamental importance involved in this case would be postponed indefinitely.* The addition of the proposed defendants at this state of the case would, therefore, unnecessarily delay the resolution of the case and unduly prejudice the present defendants in their present posture of preparation." 55 F.R.D. 420. [Citations and footnote omitted, emphasis added].

In the instant case, relitigation of the issues of *de jure* segregation and the inadequacy of the Detroit-only remedy would waste nearly four years of preparation and trial comprising fourty-six days of trial hearings, six thousand pages of trial transcript and extensive pre-trial discovery. In *Barr Rubber Products Co.* v. *Sun Rubber Co.*, 277 F. Supp. 484 (S.D. N.Y. 1967), 279 F. Supp. 49 (S.D. N.Y. 1968), 425 F. 2d 1114 (2nd Cir. 1970), *cert denied* 400 U.S. 878 (1970) the District Court denied plaintiff's request to join two additional parties and the Second Circuit affirmed that decision focusing on the problems inherent in the delay and relitigation of complex law suits:

> "... [T]he denial of Barr's motion to join two additional parties after four and one half years and six thousand pages of deposition testimony was not an abuse of discretion. To rule otherwise would have opened up a 'Pandora's box' of discovery, further protracting an already unduly distended case." 425 F.2d 1127.

In another case, *Benger Laboratories Ltd.* v. *R. K. Laros Co.*, 24 F.R.D. 450 (E.D. Penn. 1959) the District Court granted a motion to join two additional parties on the proviso that they would be bound by all previous discovery and would not seek to discover evidence relating to issues which had been covered by previous discovery. The court was cognizant of the inherent delay caused by permitting a party to be joined with full privileges to litigate and prepare the case from the beginning:

> "Normally, the court benefits from joining all possible litigants in a single suit to prevent a multiplicity of actions. There is a point in the proceedings, however, when the benefit derived from such a joinder is out weighed by the effect of a postponement of a final decision in the matter at the eleventh hour". 24 F.R.D. 452, n.2.

Thus we see that the courts have been reluctant to permit the *de novo* expenditure of judicial resources by reopening discovery or litigation of previously decided issues. Nevertheless, Petitioner school districts now propose a complete retroactive rehearing of all issues in the instant case. This would involve a trial with nearly 100 defendants, each represented by counsel, the vast majority of whom would be interested in delaying the proceedings as long as possible so that an effective remedy could be postponed indefinitely.[71]

Petitioner school districts purport to request such hearings in spite of the fact that two triers of fact – the District Court and the Sixth Circuit – have concluded that *de jure* segregation existed in the Detroit School System and that a Detroit-only remedy is inadequate. Rule 1 of the Federal Rules of Civil Procedure states

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[71] Such a result could set a precedent for other urban school district desegregation cases where all outlying suburban school districts are joined and are permitted to overburden and delay the litigation for the purpose of prolonging an ultimate remedy.

that the public interest requires a "just, speedy, and inexpensive determination of every action". This statement of policy in conjunction with the *Brown I* [72] requirement of "all deliberate speed" in the elimination of segregated school conditions mandates the denial of Petitioner school districts' demand for rehearing.

As has been pointed out, Petitioner school districts' interest in the instant litigation was aroused when the possibility of a metropolitan remedy was first enunciated. The Sixth Circuit has vacated the District Court decision on the propriety of a metropolitan remedy thus permitting Petitioner school districts to participate fully in hearings on the propriety of such a remedy, [73] a remedy which it is their common goal to defeat or delay inde-

[72] *Brown* v. *Board of Education of Topeka*, 347 U.S. 483 (1954).

[73] The Sixth Circuit ruling parallels the court's decision in *Bradley* v. *School Board of the City of Richmond*, 51 F.R.D. 139 (D.C. Va. 1970). In *Richmond*, an HEW plan for Richmond-only desegregation was determined to be inadequate by the District Court. After that determination, the suburban county school districts were joined as parties defendant in subsequent remedy hearings involving consolidation of the Richmond school district with the surrounding suburban school districts. The suburban school districts were not permitted to relitigate the issue of *de jure* segregation or the inadequacy of the HEW Richmond-only plan. Thus, both the *Richmond* court and the *Bradley* v. *Milliken* court have concluded that joinder of surrounding school districts is not necessary, either to protect the interests of those school districts or to provide a remedy, until a city-only remedy has been determined to be inadequate.

In another school desegregation case, *Higgins* v. *Board of Education of the City of Grand Rapids*, (W.D. Mich. (A 6386), Slip Op., July 18, 1973, Judge Engel joined the suburban school districts under Fed. R. Civ. P. 19 at the very beginning of the litigation. It must be pointed out that Judge Engel made this decision after the concept of a metropolitan remedy for urban school district segregation had been publicized through the instant case and through the *Richmond* case. At the time the instant case began, Judge Roth would have been extremely clairvoyant had he predicted that a metropolitan remedy was necessary. *See*, *supra*, at 54.

Along these lines it is noteworthy that Petitioner school districts were aware of the Detroit desegregation case from its inception. Yet they chose not to intervene from the beginning of the case, nor did they choose to act as *amici curiae* during the early Detroit *de jure* hearings. This was not so in *Higgins* where the surburban school districts took an immediate interest in the litigation, the apparent cause of that interest being the publicized use of a metropolitan remedy in other urban school district desegregation cases.

finitely. Yet by allowing Petitioner school districts to participate fully in hearings on the propriety of a metropolitan remedy the Sixth Circuit has only partially satisfied them. They now ask this Honorable Court to sacrifice the public interest in providing an adequate and speedy solution to the reality of segregation in the nation's fifth largest school district so that Petitioner school districts may go through the delay and meaningless formality of walking down the same path that the preceding defendants have already traveled.

III.

THE STATE OF MICHIGAN THROUGH ITS ACTIONS AND INACTIONS HAS COMMITTED DE JURE ACTS OF SEGREGATION, THE NATURAL, FORESEEABLE, AND PROBABLE CONSEQUENCES OF WHICH HAVE FOSTERED A CURRENT CONDITION OF SEGREGATION THROUGHOUT THE DETROIT METROPOLITAN COMMUNITY.

Petitioners William G. Milliken, *et al.*, contend before this Honorable Court that the findings of the District Court and of the Court of Appeals for the Sixth Circuit with regard to Petitioners' *de jure* acts of segregation are erroneous. Petitioners have been accorded three hearings on this issue, the first being before the District Court, the second before a three-judge panel in the Court of Appeals for the Sixth Circuit, and the third, an *en banc* rehearing in that Court, thus clearly falling within the "two Court rule."[74] Yet, Petitioners maintain that these findings are not supported by the evidence.

Petitioners are attempting to play the "old shell game" with this Honorable Court and with the constitutional rights of Respondents Ronald Bradley, *et al.* in isolating the specific findings of segregatory conduct on the part of individuals, from the entire pattern of events created by the interaction of all State defendants in this litigation. Each action by the State, when viewed out of the context of that pattern of conduct, arguably might not support a finding of a constitutional violation in this litigation. However, in school desegregation cases segregatory intent may be shown by a course of conduct, the natural and foreseeable consequences of which, result in a current condition of segregation.[75]

THE VIOLATIONS.

A. The Transportation of Black Children From the Carver School District.

Petitioners suggest that the transportation of black students from the Carver school district under a contractual arrangement

[74] Rehnquist J., (dissenting), *Keyes* v. *School District No. 1, Denver, Colorado*, 413 U.S. 189, 264 (1973).

[75] *Keyes, supra.*

with the Detroit school district, could not have occurred with the approval, tacit or express, of the State Board of Education. The basis of this contention is that the State Board of Education could not have had knowledge of this action, for the simple reason that even the Superintendent of the Detroit school district was unaware of it. There is no direct evidence in the record to substantiate the fact that the then Superintendent of the Detroit school district was not informed of the busing of the Carver school district students past a closer all white high school to a black high school. The only statement in support of this is the hearsay testimony of Dr. Norman Drachler.[76] Thus, it is impossible to determine whether Dr. Drachler's statements regarding the knowledge or lack of knowledge of his predecessor in office are in fact correct.

Secondly, whether in fact the then Superintendent of the Detroit school district had personal knowledge of the Carver transportation arrangement is totally irrelevant to the issue of the State Board of Education's awareness of it. The State Board of Education has comprehensive statutory powers over contractual arrangements between school districts in enrolling non-resident pupils on a tuition basis. These include the certification of the number of non-resident pupils enrolled, the districts in which such pupils reside, the amount of tuition charged and any other pertinent information;[77] the review of transportation routes and distances;[78] and disbursement of transportation funds to the local school districts involved.[79] With supervisory control over the contractual arrangements and the allocation and disbursement of funds, it is inconceivable that the State Board of Education would be unaware of the racial characteristics and the arrangements of the local school districts involved.

The Carver school district was a black district, located in the western portion of Royal Oak Township immediately adjacent to the Oak Park school district.[80] Reference to a map of these school districts[81] clearly illustrates that the distance between the

[76] (Va 186).

[77] MCLA § 388.629.

[78] MCLA § 340.600.

[79] MCLA §§ 388.621.; 388.643.

[80] Brief of Petitioner Grosse Pointe Public School System at 30, n. 57..

[81] *See*, Plate Number 2, *infra* at 116.

Oak Park school district and the Carver school district was less than that between the Carver school district and the nearest white high school, Mumford, in the Detroit school district. The distance to the black Detroit high school, Northern, is even greater. Thus, the conclusion that the State Board of Education knew and understood the significance of the Carver school district transportation is inescapable. Its approval of this arrangement directly involved the State Board of Education in discriminatory acts extending across school district boundaries.

B. Allocation of Transportation Funds.

Petitioners suggest that the *de jure* acts of segregation found to have been committed as a result of the allocation of transportation funds by the State of Michigan are improper, in light of this Honorable Court's recent decision in *Rodriguez*[82] The provision of transportation funds solely to rural districts was held in that case to have been a rational non-suspect classification. Many of the Michigan suburban school districts, including Petitioner school districts have been eligible for disbursements from the State Transportation Aid Act fund since its enactment in 1955.[83] The applicability of *Rodriquez* in this cause is highly questionable, for the urban-rural classification bears little relationship to the true nature of the school districts eligible for transportation aid under that Act. Their eligiblity was established, despite the fact that many of these suburban school districts either were at the time of enactment, highly urbanized communities or have since become so.

Thus, although these suburban school districts do not precisely fall within the categorization of "rural", they continue to receive transportation aid reimbursement from the State of Michigan.

Secondly, the State Transportation Aid Act provides for reimbursement or urban intra-city transportation costs if a particular bus route necessitates the crossing of a city or village line in reaching the public school within the same school district to which children are assigned.[84] It is difficult to discern any rationale

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[82] *San Antonio Independent School District* v. *Rodriguez*, 411 US. 1 (1973)

[83] Now MCLA §388.1171, formerly MCLA §388.621.

[84] MCLA §388.1171 (f).

whatsoever for the intra-city transportation allowed under that provision of the Act when in-city transportation reimbursement is denied if the bus route does not happen to cross a city or village line regardless of distance to the public school.

Few of the school districts, other than the Detroit school district, in Wayne, Oakland, and Macomb county bear any relationship to municipal boundary lines. Thus, it is questionable whether the exception to intra-city transportation aid reimbursement has any basis other than to discriminate against those school districts whose boundary lines happen to coincide with a municipal boundary line. The Michigan Legislature subsequently amended the Act to permit reimbursement for intra-city transportation.[85] The change in the law was totally illusory for the reason that the Legislature failed to fund it adequately to cover the additional school districts made eligible by the amendment.

The State Board of Education was required to disburse the existing funds only to the eligible school districts already receiving funds for transportation.[86] The Legislature did subsequently provide some funding for the intra-city transportation. However, it was a negligble amount, in comparison to the total transportation funding authorized under the State Transportation Aid Act.[87]

In enacting amendments to the Transportation Aid Act, despite the fact that intra-city transportation was partially funded, the Michigan Legislature evidenced further probably segregatory intent by inserting a clause prohibiting allocations of funds for "any cross busing to achieve a racial balance of students within a school district or districts."[88]

Petitioner Grosse Pointe Public School System suggests that the State Transportation Aid Act had no discriminatory motive or intent, because of the fact that the Grosse Pointe Public School System, a virtually all white school district, also was denied any allocation of funds for pupil transportation.[89] However, Peti-

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[85] MCLA §388.1171.

[86] (IIIa 31-32) (MCLA §388.1171)

[87] Act 101, §77, Mich. Pub. Acts of 1973, amending MCLA §388.1177

[88] MCLA §388.1179. A similar provision was included in the Compensatory Education Provisions for student transportation. MCLA §388.1139.

[89] Brief of Petitioner Grosse Pointe Public School System, at 27.

tioner Grosse Pointe Public School System's need for transportation aid "during the 'so-called' critical years" was nowhere near as great as that of the Detroit school district.

Transportation is provided by the Detroit school district at the elementary school level if there exists physical dangers to students in reaching their schools. These physical hazards include: railroads, rivers, major thoroughfares, and, in some cases, antagonism from white residents living in an area through which black children had to pass on the way to their assigned schools.[90] At the junior and senior high school level, transportation aid was also provided to parents of school students living at the outermost edges of school attendance areas, who met certain indigency requirements.[91] However, one of the major expenditures of the Detroit school district involved the transportation of some 2,000 to 3,000 students per year for purposes of relieving overcrowding of schools. All of these expenditures for transportation were made from the general operating fund of the Detroit school district.[92]

Petitioner Grosse Pointe Public School System, however, has no such transportation requirements. Other than transportation of special education students, no transportation costs are incurred by the Grosse Pointe Public School System. In fact, of the 13,529 students enrolled in the Grosse Pointe school district in 1971, only 1,200 utilized public transportation facilities at their own expense.[93] It is quite evident that the Grosse Pointe school district did not evidence a comparable need for transportation aid. Despite the fact that the denial of transportation aid has application to a few other white suburban school districts, it is apparent that the primary intended effect of the Transportation Aid Act was to discriminate against the Detroit school district, and promote further disparity in school district financing. The denial of transportation aid to the Detroit school district necessitated the allocation of its general operating funds to its non-state funded transportation program. Thereby placing a greater tax burden on its residents, with little or marginal improvement in the delivery of educational services by the Detroit school district for each dollar expended.

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[90] (R. 2825).

[91] (R. 2817).

[92] (R. 2825-2827).

[93] (Ia 255-57).

On the other hand, those suburban school districts eligible for transportation aid could allocate a greater percentage of their general operating funds to the delivery of educational services for each dollar of tax revenue raised. Thus, the claimed rational classification scheme of the Transportation Aid Act, when applied to the Detroit metropolitan area, had the effect of promoting financial inequalities between the Detroit school district and the suburban school districts. The fact that extreme disparities exist in the racial characteristics of the Detroit school district and the suburban school districts, as well, clearly illustrates the suspect nature of the claimed "rational" classification of the Transportation Aid Act in its application to the Detroit metropolitan area. These consequences were obviously foreseeable by the State of Michigan.

C. School Construction And Site Selection

1. Site Selection.

Petitioners contend that the supervisory powers over site selection in the State of Michigan (found by the Court of Appeals to have "fostered segregation throughout the Detroit Metropolitan Area")[94] are limited to ensuring that such school construction conforms to health and safety regulations. However, Petitioners William G. Milliken, *et al.*, admit in their brief that specific powers over site selection and school construction were vested in the Superintendent of Public Instruction at least from 1949 to 1962.[95] Thus, the State of Michigan did have direct control over school construction and site selection by local school districts in Michigan.

It is further contended that there is no relationship between the sites approved and reviewed by the Superintendent of Public Instruction during the aforementioned period and the school construction relied upon by the lower Courts in finding *de jure* segregation, for the reason that such construction occurred on and after 1962. However, it must be borne in mind that, as was stated by

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[94] (157a).

[95] Brief of Petitioner William G. Milliken, *et al.* at 34.

Deputy Superintendent Arthur Johnson, before the District Court, during the hearings on the issue of segregation, ". . . .we still live with the results of discriminatory practices."[96] Despite the fact that the actual construction of schools may have commenced and been completed subsequent to the relevant period of direct control over site selection by the Superintendent of Public Instruction, there is evidence that site selection in the Detroit school district occurred, in many instances, several years before construction was actually commenced on those sites.[97]

As a result, it is conceivable and probably that many of the site selection decisions made by the Detroit school district, relating to school construction after 1962, had in fact been directly reviewed by the Superintendent of Public Instruction, under relevant statutory authorization.

Nevertheless, subsequent directives, policy statements, and reports issued and promulgated by the State Board of Education subsequent to 1962 (the date as of which the explicit statutory grant of control to the Superintendent of Public Instruction was amended), indicate that the State Board of Education deemed itself to be a repository of that same power by implication.

In 1966, the State Board of Education, in conjunction with the Michigan Civil Rights Commission, issued a Joint Policy Statement which required that:

> "Local school boards must consider the factor of racial balance along with other educational considerations in making decisions about selection of new school sites, expansion of present facilities. . . .Each of these situations presents an opportunity for integration."[98]

This policy was reaffirmed in the State Board of Education's School Plant Planning Handbook which was promulgated under

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[96] (IIIa 229).

[97] (R. 2844; .2961).

[98] (145a).

the penumbra of powers delegated to the State Board of Education in the aforementioned "health and safety" statute:

> "Care in site location must be taken if a serious transportation problem exists or if housing patterns in an area would result in a school largely segregated on racial, ethnic, or socio-economic lines."[99]

Although Petitioners William G. Milliken, *et al.* contend that these policy statements were merely "admonitions" to local school districts, and not legally enforceable rules, the argument loses much vitality when one considers that the language utilized therein, by insertion of the word "must", suggests a directive rather than a mere admonition.

The State Board of Education has further stated in its Annual Report of 1970[100] that its powers in reviewing school construction plans and site selection includes educational and financial evaluations of the proposals.

If in fact the State Board of Education does not have direct supervision and control over site selection and school construction, other than to assure health and safety standards as the relevant legislation imports on its face, what possible explanation can be given for the issuance of the foregoing statements and directives? The promulgation of fatuous platitudes by a state agency exercising, at the very minimum, supervisory powers, if not actual authority to control education in the State of Michigan becomes all the more invidious, when it involves the fundamental constitutional rights of the school children of the State of Michigan.

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[99] (145a)

[100] Ann. Report, Michigan Department of Education, (1970) at p. 17:

> "The Department of Education is required by law to approve plans for all public and non-public school construction and to approve private occupational schools and private boarding schools.
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> "Short-range goals for this program would include the educational evaluation of all public and non-public school buildings of this state, a determination of present and feasible school building needs for all public school districts, and a determination of financial ability of all public school districts to meet their present and feasible school building needs."

Petitioners also contend that, because the "health and safety" statute mandated no directives to "maximize integration", there was no duty on the part of the State Superintendent of Public Instruction to take that factor into consideration in exercising the power of approval and review of site selection. There is no constitutional duty to "maximize integration".[101] However, Petitioners totally misconstrue their obligations in the exercise of powers under state statutes. Regardless of the characterization of a particular statute, the State is not exculpated from acting under that statute in an unconstitutional manner.[102] The statutory power to approve site selection, may not be exercised by state and local authorities in a manner which will foster segregation throughout the Detroit Metropolitan area. A contrary result would insulte state action, under state law, from the commands of the Constitution.

Petitioners further contend that, as to site selection after the amendatory removal of direct supervision from the Superintendent of Public Instruction, the "admonitions" promulgated by the State Board of Education imposed no requirements to "maximize integration." Again, however, Petitioners misconstrue their obligations under the Constitution. Their duty is to act in a manner not violative of basic constitutional rights, whether such action is based upon statute, rule, or "admonition." Although such "admonitions" may impose a greater obligation upon state action than the Constitution, they do not abrogate the duty of state officers to meet minimal constitutional requirements. The fostering of state segregation in site selection throughout the Detroit metropolitan area not only fails to meet the self-imposed standards of "maximizing integration", but also does not satisfy their obligations under the Constitution.

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[101] *Cf. Bell* v. *City School of Gary*, 213 F. Supp. 819 (N.D. Ind.), *aff'd*, 324 F.2d 209 (7th Cir. 1963), *cert. denied*, 377 U.S. 924 (1964).

[102] *Cf. Lee* v. *Nyquist, 318 F. Supp. 710 (W.D.N.Y.* 1970), *aff'd*, 402 U.S. 935 (1971); *Alabama* v. *United States*, 314 F. Supp. 1319 (S.D. Ala.), *appeal dismissed*, 400 U.S. 954 (1970), wherein the locally called "Freedom-of-Choice Acts" were invalid.

2. School Construction

School construction in the State of Michigan is financed at least in part through sale of municipal construction bonds.[103] The issuance and sale of these bonds must be approved by the Municipal Finance Commission,[104] a state agency, the membership of which includes the Governor of the State of Michigan, the Superintendent of Public Instruction and the Attorney General of Michigan.[105]

Thus, Petitioners William G. Milliken, *et al.*, exercise direct supervisory control over the approval of all school construction in the State of Michigan.[106] In participating as members of that body, Petitioners cannot contend that they do so without knowledge of the policies enunciated by other state agencies, with regard to school construction and site selection. This is especially so in the case of the Superintendent of Public Instruction who must be assumed to have first hand knowledge of the policies, directives and mandates of the State Board of Education with regard to school construction and site selection. It is apparent that the very reason for his membership on the Municipal Finance Commission is to ensure that this knowledge will be a part of the deliberations leading to the approval of school bonding construction proposals by local school districts. Thus, there exists direct involvement of this state agency and Petitioners, William G. Milliken, *et al.*, in the approval of school construction and site selection which "fostered segregation through the Detroit metropolitan area."

Secondly, the District Court held that the limitation on bonding imposed by the State of Michigan created an inequality of educational opportunity between the Detroit school district and all other school districts throughout the state.[107] Petitioners suggest that such a finding by the District Court was improper, in light of this Honorable Court's recent ruling in *Rodriguez*.[108] In-

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[103] MCLA §§340.683-.684

[104] (IIIa 156-7).

[105] MCLA §132.1

[106] (IIIa 157)

[107] (152a).

[108] *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1 (1973).

equality of school district financing is not constitutionally impermissible, if there is a rational basis for such statutory classification. However, the imposition of a lower bonding limit by the State on one school district in the entire State of Michigan raises a serious question as to the rational basis of that statutory classification. As school construction in Michigan is financed, in part, through bonding, with the balance made up through local tax millage efforts, the lower limit on bonding power of the Detroit school district had the necessary, probably and foreseeable consequence of placing greater millage demands on the real property tax base of the Detroit school district.

There is ample evidence of the fact that school construction and site selection are considerably more costly in the Detroit school district, than in most school districts throughout the state. One of the major factors in that increased cost is the acquisition and clearance of school sites. Costs of site acquisition and clearance were approximately $100,000 per acre in the Detroit school district, due to the dense residential character of the neighborhoods in which schools were expanded and constructed.[109] Coupled with the minimum site standards of 5-1/2 acres for elementary school sites, 20 acres for junior high school sites, and 30 to 35 acres for high school sites,[110] the lower bonding limits placed greater financial burdens on property tax millages for school construction.

There is also ample record evidence, however, that the general operating expenses of the Detroit school district are more costly than those of other school districts in the State of Michigan.[111] The Detroit school district is, as a result, required to and does make higher general fund expenditure per pupil than most of the other school districts.[112] The major factors in such increased expenditures for teacher salaries were the highly competitive recruitment of black faculty;[113] and the disadvantageous

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[109] (R. 2968).

[110] (IIIa 87-8).

[111] (R. 54-65; R. 4543-4559).

[112] Brief of Petitioner William G. Milliken, *et al.*, at 28.

[113] Brief of Petitioner William G. Milliken, *et al.*, p. 28-9.

teaching conditions in Detroit during the 1960's.[114]

The general operating expenses of the Detroit school district are provided by property tax millages and direct state aid. By lowering the bonding limit in the Detroit school district, greater burdens in meeting the higher costs of school construction and site selection are placed upon property tax millage capabilities. On the other hand, increased costs in general operating expenses within the Detroit school district also place a greater burden upon property tax millage capabilities. Thus, general operating expenses compete with school construction funding in property tax millages, which when combined with a lower bonding capability in the Detroit school district, results in forcing the local elector to choose, at the maximum taxing effort possible, between school construction or operating expense millages. Either choice, however, will result in less value received per tax dollar expended, in comparison to other school districts having higher bonding limits. In those school districts, the higher bonding limit eases the burden on school construction millages, thereby increasing the taxing level for general operating expenses. In either event, the suburban school districts receive greater financial benefits from this classification scheme. However, when this classification is also based upon differing racial characteristics between the Detroit school district and other school districts, the basis for that classification becomes suspect. Thus, the differential in bonding limitations falls subject to criticism similar to that raised with regard to the Transportation Aid Act.[115]

In summary, it is apparent that the State Board of Education and other state officers, Petitioners herein, have built upon segregated housing patterns both within and without the Detroit school district, through the exercise of supervisory powers over site selection, school construction and bonding and the discriminatory application of state laws between the Detroit school district and other local school districts.

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[114] Findings of Facts, 23 & 24, (31a).

[115] See discussion, *supra* p. 67-70.

D. The Enactment of Act 48

Further indication of the *de jure* acts of segregation by the State of Michigan is embodied in Act 48, Mich. Pub. Acts of 1970, an unambiguous demonstration of the State's segregatory intent as to Detroit's schools.

Petitioners contend that there were no segregatory motivations in the enactment of Act 48, but rather that it was merely an amendatory decentralization measure. Petitioner Grosse Pointe Public School System has attempted to characterize the enactment of Act 48 as an act "to facilitate the mechanics of decentralization",[116] because it was passed as an amendment to Act 244, Mich. Pub. Acts of 1969, the original decentralization legislation of the Michigan Legislature. But the factual context and the actual language of Act 48 underscore its true intent.

Under the directives of Act 244, the Detroit Board of Education, in decentralizing the administration of schools into seven regional school districts within its borders, attempted to chart a course of action independent of the existing policies of the State in perpetuating a condition of segregation within the Detroit school district. It did so by factoring in the criterion of racial integration in drafting the boundary lines of the proposed regions within its borders.[117]

In addition, the Detroit Board of Education proposed and approved what is now known as the April 7th Plan, a partial integration plan for over half of the high schools in the district, which was to be accomplished by redrawing attendance patterns on an east-west, rather than on a north-south basis as had previously existed. The April 7th Plan was poorly received by certain segments of the Detroit community, resulting in the initiation of recall petitions against several members of the Detroit Board of Education who had supported the proposal.

Before the results of the recall petitions were in, and before the April 7th Plan could be implemented for the ensuing school

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[116] Brief of Petitioner Grosse Pointe Public School System at 20.

[117] *See generally, Guidelines For School Decentralization,* Detroit Public Schools, Office for School Decentralization.

year, the Michigan Legislature enacted, and the Governor signed, Act 48 into law. It not only re-established the basic decentralization plan of Act 244, but it also suspended implementation of the April 7th Plan and eliminated two existing integration programs of the Detroit school district.

Petitioners attempt to innocently characterize the Act as a good faith administrative measure (Brief of Petitioner Grosse Pointe Public School System at p. 21), but fail to quote that portion of the Act which enacted into law a mandatory neighborhood school attendance policy with a "freedom of choice" escape provision superimposed on the old north-south attendance zones:

> "The implementation of any attendance provisions for the 1970-71 school year determined by any first class school district board shall be delayed pending the date of commencement of functions by the first class school district boards established under the provisions of this amendatory act but such provision shall not impair the right of any such board to determine and implement prior to such date such changes in attendance provisions as are mandated by practical necessity. *In reviewing, confirming, establishing or modifying attendance provisions the first class school district boards established under the provisions of this amendatory act shall have a policy of open enrollment and shall enable students to attend a school of preference but providing priority acceptance, insofar as practicable, in cases of insufficient school capacity, to those students residing nearest the school and to those students desiring to attend the school for participation in vocationally oriented courses or other specialized curriculum.*" Act 48, §12, Mich. Pub. Acts of 1970. [emphasis added].

Section 12 of Act 48 had the immediate intent and avoidable effect of preventing the desegregation of twelve of Detroit's twenty-one high schools. It abrogated the Detroit Board's policy which required that the program of transportation to relieve overcrowding in the school system be predicated upon transporting students to the nearest school in which integration would be

improved.[118] The second nugatory effect of the Act was the elimination of the Detroit Board requirement that, under the open enrollment program, students transferring from one school to another could only do so if the transfer would *promote the integration* of the school to which the student was transferring to.

Faced with this mandate from the Michigan Legislature,[119] at whose sufferance local school districts exist, the Detroit Board of Education had no choice but to comply. The Act's resulting effects were clear and decisive. It eliminated existing and halted further integration efforts within the Detroit school district. Petitioner Grosse Pointe Public School System, however, attempts to blunt the obvious segregatory aspects of this enactment by suggesting that it was met with the virtually unanimous approval of all members of the Michigan Legislature, both black and white.

However, as the events of the day clearly indicate,[120] that vote was reached as a result of a compromise of a long and bitter deadlock over the appropriate response by the Legislature to the concern in the City of Detroit, created by the proposed April 7th Plan.

Indeed, there is evidence that many Legislators agreed to this compromise only because of a belief, subsequently substantiated by the Court of Appeals for the Sixth Circuit,[121] that the portions of the Act, namely Section 12, directed to the April 7th Plan were clearly unconstitutional.[122]

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[118] *See generally* W. Pindur, "Legislative and Judicial Rules in the Detroit School Decentralization Controversy", 50 J. Urban Law 53 (1972).

[119] Mich. Const. art. VIII §2, wherein the legislature is charged with the sole power and authority to maintain and support a system of public education.

[120] Pindur, *op. cit.*

[121] *Bradley* v. *Milliken*, 433 F.2d 897, 904 (6th Cir. 1970), wherein it was held that there was a sufficient causal nexus for striking down §12 as violative of the Fourteenth Amendment.

[122] Pindur, *op. cit.* at 66-67.

Despite the fact that the lower Courts found segregatory intent in the enactment of Act 48 and the causal nexus of the foreseeable consequences of such action in the overt frustration of integration policies, Petitioners Grosse Pointe Public Schools and Milliken, *et al.*, suggest that the effects were nontheless *de minimus.*

Indeed, it is claimed that following the suspension of Section 12 of Act 48, there no longer existed a legislative mandate for the Detroit Board of Education not to implement its proposed April 7th plan. Petitioner Grosse Pointe Public School System further characterized the injunction of the April 7th Plan as being of extremely limited duration, thereby permitting the Detroit Board of Education ample time to reinstate the plan if it so desired.

However, this loses sight of the fact that the Detroit school district was in the midst of a new academic year. Midyear changes in the assignment of students to particular schools would have resulted in massive disruptions in the educational programs of the students concerned.

The suspension of the proposed April 7th Plan had the reasonable, probable and foreseeable effect of deferring any possible implementation of an integration plan to the 1972-73 academic year. The Detroit Board of Education, however, proposed an alternative plan to the District Court which it believed would accomplished greater integration than the April 7th Plan, without arousing the antagonism in the community. The District Court, as affirmed by the Court of Appeals, approved this plan as a viable alternative.[123] Under these circumstances, the actions of the Detroit Board of Education were both reasonable and proper.

Petitioners further suggest that, because the enactment of Act 48 had no discernible effect in increasing segregation within the Detroit school district beyond that created by changing demographic patterns, no constitutional violation was committed. We submit that there is no basis in fact or in law for such a conclusory opinion.

First, Act 48 frustrated the implementation of a desegregation policy, with the resulting effect of the perpetuation of segre-

[123] *See Bradley* v. *Milliken*, 438 F.2d 945 (6th Cir. 1971).

gated schooling for an additional academic year. Secondly, Act 48 is a clear example of the discriminatory treatment which Detroit, as the only first class school district in the State of Michigan, is vulnerably susceptible to under the dictates of the Legislature, i.e., perceptible, stigmatic, uneven treatment.

It is readily apparent that the enactment of Act 48 by the State had the probable and necessary effect of maintaining and perpetuating a condition of segregation in violation of the Fourteenth Amendment.

E. State Action Through Local School Districts.

Under Michigan law local school districts are mere instrumentalities and agents of the state.[124]

Thus, actions of the state are binding on the Detroit Board because the Detroit Board is the agent of the state. Likewise, actions of the Detroit Board are binding on the State.

Specifically, the Courts below found that the Detroit Board of Education: (1) maintained optional attendance zones in neighborhoods undergoing racial transition and between high school attendance areas of opposite predominate racial composition, which had the effect of fostering segregation; (2) built, with the imprimatur of the State Board of Education and Municipal Finance Authority, a number of schools which resulted in continued or increased segregation; (3) maintained feeder patterns that resulted in segregation; and (4) bussed black pupils past or away from closer white schools with available space, to black schools. (25a), (110a).

It is true that the Detroit Board of Education did argue in both the District Court and in the Court of Appeals that it committed no *de jure* acts of segregation. However, it has chosen not to appeal the issue of violation simply because of this Court's pronouncement in *Keyes*, coupled with the findings of the courts below. Even if the Detroit Board committed no *de jure* acts it still would be bound by the actions of the State of Michigan acting alone.

State action is the Alpha and Omega. Whether it was the

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[124] See discussion, pp. herein.

State of Michigan acting alone or in conjunction with its agent, the Detroit Board, or The Detroit Board acting alone, the sum total as found by the Courts below is that the State, and only the State, violated the constitutional rights of Detroit children which resulted in racial isolation.

In summary, from the initial participation in the Carver school district transportation, through discrimination in transportation funding, school construction and site selection approval, to enactment of Act 48, Petitioner William G. Milliken, *et al.* have participated in segregatory busing practices across school district boundary lines, built upon segregatory housing patterns, and frustrated integration efforts of local school officials. The discriminatory intent has thus been shown. A current condition of segregation exists. The actions of Petitioners William G. Milliken, *et al.*, had the natural foreseeable consequences of causing the current condition of segregation. As the Courts below noted, a clearer violation of constitutional rights by the State of Michigan could not be shown.

IV

DETROIT-ONLY DESEGREGATION PLANS ARE NOT CONSTITUTIONAL REMEDIES BECAUSE THEY DO NOT ELIMINATE, "ROOT AND BRANCH," THE VESTIGES OF THE UNCONSTITUTIONAL DETROIT SCHOOL SEGREGATION.

A desegregation plan limited to the boundaries of the Detroit school district will not desegregate a single school. It will not do so now. It will not do so hereafter. Both the District Court and the Court of Appeals accepted that fact after examining the best Detroit-only plans that the plaintiffs or the Detroit Board of Education were able to offer.[125]

There was an excellent reason for those Courts to reach that conclusion: A Detroit-only plan cannot eradicate the objective vestiges of a segregated system nor can it eliminate the human perception that the schools in Detroit are black schools.

ANY DETROIT-ONLY REMEDY WOULD LEAVE THE DETROIT SCHOOL SYSTEM RACIALLY IDENTIFIABLE AS BLACK THEREBY NOT REMOVING THE VESTIGES OF THE STATE IMPOSED SEGREGATION.

The racial identifiability of a school system, imposed by state action, presents a *prima facie* case of unconstitutional segregation in which the vestiges of racial identifiability must be eliminated, "root and branch." *Green* v. *County School Board of New Kent County*, 391 U.S. 430, 435 (1968); *Swann* v. *Charlotte-Mecklenberg Board of Education*, 401 U.S.1, 18 (1971); *Wright* v. *Council of City of Emporia*, 407 U.S. 451, 465 (1972).

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[125] Findings of Fact and Conclusions of Law on Detroit-only Plans of Desegregation. (53a); *aff'd, Bradley* v. *Milliken*, 484 F.2d 215 (6th Cir. 1973) (173a).

A Detroit-only plan will remedy nothing. The segregated condition is too massive and deeply rooted. After extensive reassignment of students, the Detroit school system will remain racially identifiable as black, hemmed in by nearby neighboring white suburban school systems in a highly inter-related metropolitan community bound together by common social, economic and political spheres.

In shaping an effective remedy, this Honorable Court has held that it is permissible for a trial judge to consider the racial composition of the school system as a whole. *Swann* v. *Board of Education, supra,* at 25; *North Carolina Board of Education* v. *Swann,* 402 U.S. 43 (1971). The lower courts scrupulously adhered to this principle when they rejected a Detroit-only Plan.

The percentage of the black pupil population in Detroit rose from 45.8% in 1961 to 64.9% in 1971.[126] In 1972, the black pupil population rose to 67.3%.[127] And in 1973, the black pupil population had reached 69.8%.[128] Even more illustrative of the racial identifiability of the Detroit public school system is the fact that as of the last federal census, the total racial population of the City of Detroit was 55.2% white to 43.9% black [129] and the metropolitan student racial composition was 81% white to 19% black.[130]

The District Court correctly concluded that no amount of shuffling of Detroit pupils within the boundaries of the City of Detroit would effectively remedy the racial identifiability caused by *de jure* acts of segregation. Coupled with the fact that Detroit is racially identifiable, is the finding of the District Court that the implementation of any Detroit-only plan, even a 65% – 35% black

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[126] Exhibit P.C. 6 (Va 16).

[127] Racial-Ethnic Distribution Of Students and Employees in the Detroit Public Schools, October 1972, 3.

[128] Racial-Ethnic Distribution of Students and Employees in the Detroit Public Schools, October, 1973.

[129] Ruling On Issue of Segregation, 338 F.Supp 582, 586 (E.D. Mich., 1971) (21-22a.).

[130] *Bradley* v. *Milliken,* 484 F.2d 215, 250 (6th Cir. 1973) (173a.).

– white assignment, would accelerate resegregation.[131] It should be noted, however, that under the existing racial composition of the Detroit schools, a 65% – 35% plan would no longer be even mathematically possible, much less realistically workable.

The lower courts found that the faculty racial ratios in Detroit met the constitutional test of a balanced staff and is an exemplary example of staff integration.[132] However, it further emphasized the racial identifiability of the Detroit school system in contrast to the faculties of the relevant surrounding suburban school systems. Of the fifty-two school districts in the proposed metropolitan remedy plan, 40 districts had less than 1% black faculty members.[133] Of the same 52 districts, 47 had less than 1% black administrators.[134]

As between Detroit and the other 52 school districts, Detroit has 86% of all black teachers and 82% of all black administrators in the relevant metropolitan area.[135] This is true, even though the entire Detroit system has only 34% of all teachers and 38% of all administrators in the relevant metropolitan community.[136]

Petitioner Grosse Pointe Public School System complains that Respondents are asserting a new constitutional right, *i.e.* freedom

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[131] Findings Of Fact And Conclusions Of Law On Detroit-Only Plans Of Desegregation, Finding No. 8. (55a). The experts who testified as to a Detroit-only plan, agreed that resegregation would ensue under a plan in which the pupil ratio was 65% Black to 35% White. Testimony Of Dr. James W. Guthrie; (IVa 112, 113); Dr. Betty Ritzenhein (IVa 57, 58); Dr. Gordon Foster (IVa 88-89). The reason for the exodus of whites results from a school passing a "tipping point" which is somewhat between 35% – 55% black. Testimony of Dr. Betty Ritzenhein (IVa 57, 58); Testimony of Dr. James Guthrie (IVa 109). A plan which left the Detroit schools 65% black would obviously accelerate resegregation since the tipping point has been surpassed by at least 10%.

[132] Ruling on Issue of Segregation, 338 F. Supp 582, 590-59 (E.D. Mich, 1971) (31-32a).

[133] P.M. 13, (Va 105-109)

[134] *id.*

[135] *id.*

[136] *id.*

from attending a racially identifiable school.[137] Such an interpretation is patently false and misapprehends the nature of this case. Over and above the fact that Petitioner Grosse Pointe Public School System has chosen to blindly ignore the numerous findings of fact and conclusions of law of the two lower courts which found pervasive *de jure* segregation, its reliance on the holdings of *Spencer* v. *Kugler*, 326 F. Supp. 1235 (D.N.J. 1971) aff'd 404 U.S. 1027 (1972); *Wright* v. *Council of the City of Emporia*, 407 U.S. 451 (1972); and *United States* v. *Scotland Neck Board of Education*, 407 U.S. 484 (1972), is inapposite.

Petitioner Grosse Pointe Public School System confuses racial identifiability as a *vestige* with racial identifiability as a *violation* of the Constitution. This is not a racial balance case. Rather, constitutional violations have been found. An *effective* remedy must issue. To characterize the racial identifiability of the Detroit school system as something other than a vestige of *de jure* segregation runs contrary to Petitioner Grosse Pointe Public School System's own admonitions against confusing the remedy with the violations – something which it has obviously done with its aforementioned proposition.

This misunderstanding of constitutional law is evidenced by Petitioner Grosse Pointe Public School System's reliance on *Spencer, supra. Spencer* was a violation case that held that racial imbalance, existing through no discriminatory action of state authorities, did not violate the Constitution. There were neither segregatory intent nor segregatory acts in *Spencer*.

In the instance case, two Federal Courts have agreed that there was pervasive *de jure* segregation which has led to the racial identifiability of the entire Detroit school system. Unlike the *de facto* segregated conditions existing in *Spencer*, this appeal involves the *vestige* of racial identifiability caused by *de jure* acts of segregation for which this Honorable Court has consistently held an effective remedy must issue. *Brown* v. *Board of Education*, 349 U.S. 294 (1955); *Green, supra; Swann, supra; Davis* v. *Board of Commissioners of Mobile County*, 402 U.S.33 (1971); *Wright, supra*.

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[137] Brief For Petitioner Grosse Pointe Public School System, at page 39.

Additionally, Petitioners' startling assertion that this court in *Wright, supra,* and in *Scotland Neck, supra,* impliedly held that a plan of desegregation limited to a predominately black school system is not insufficient to remedy constitutional violations of its students' rights to equal protection not only misconstrues the factual setting of the aforementioned cases, but also misinterprets the legal rationale employed by this Honorable Court in reaching its decisions.

In both *Wright* and *Scotland Neck* this Court was presented with the remedy stage of a school desegregation suit. In both cases the desegregation area encompassed the entire student population of a county school system, the relevant community. The racial ratios approved in *Wright* and *Scotland Neck* reflected the entire student population in those communities.

The lower courts in the instant case found the relevant community to be the Detroit metropolitan area. A plan limited to the hemmed-in city limits of Detroit would result in Detroit being racially identifiable as a black school system within this relevant community.

Further, the District Court in *Wright* received data which showed that the county desegregation area had a racial composition of 34% white and 66% black students. If the City of Emporia had established its own splinter system the City of Emporia schools would have 48% white and 52% black while the county schools would have been 28% white and 72% black. This Court determined that given the splinter district, the percentage of whites in the county schools might be anticipated to drop due to enrollment in private academies and the movement of whites to the city's school.

Thus, with the establishment of a separate Emporia City School System, the desegregation area would not reflect the relevant county-wide racial ratio and would frustrate the dismantling of the dual school system and perpetuate racial segregation.[138]

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[138] *See also, United States* v. *Scotland Neck City Board of Education, supra,* wherein it was held that the options to dismantle a dual school system "must be judged according to whether it hinders or furthers the process of school desegregation." 407 U.S. 489.

The courts below employed an inverse application of the above-quoted legal rationale in rejecting a Detroit-only remedy. The Detroit school system was found to be a *de jure* segregated system; the vestige of such segregated condition being the racial identifiability of the system. A Detroit-only remedy would be ineffective in converting Detroit to a unitary system for the reasons that the student bodies anticipated by such a plan would leave Detroit identifiably black in contrast to the majority white population ratio of the City of Detroit, and in greater contrast to the overwhelmingly white population of the relevant metropolitan area.

A DETROIT-ONLY PLAN LEADS TO RESEGREGATION RATHER THAN CONVERSION TO A UNITARY SCHOOL SYSTEM.

Petitioners, Allen Park Public Schools, *et. al.* and William G. Milliken, *et.al.* rely solely on selected excerpts of Dr. Gordon Foster's testimony in support of their ill-conceived argument that a Detroit-only plan is an effective remedy. Yet, said Petitioners fail to inform this court that Dr. Foster's endorsement of a Detroit-only plan, prepared by him, was qualified by the fact that a metropolitan plan, *under the circumstances of this case*, was in his opinion a more effective plan of desegregation.

> "In my opinion a metropolitan solution would certainly be a preferable one and would offer greater stability in the long run and more meaningful education and desegregation."[139]

Dr. Foster's testimony reveals that even under his own plan, Detroit-only would not provide the greatest possible degree of desegregation in view of the alternatives available. *Green, supra*, at 439; *Davis, supra*, at 37; *Wright, supra*, at 468-469.

The expert opinion of Dr. James Guthrie and Dr. Betty Ritzenhein totally rejects any alleged effectiveness of a Detroit-only plan to desegregate the City's schools and assure a unitary system now and hereafter.

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[139] Testimony of Dr. Gordon Foster (IVa 70), *see also* (IVa 91). In fact, Dr. Foster now embraces a metropolitan plan of desegregation as evidenced by his recent article, "Desegregating Urban Schools: A Review of Techniques," 43 Harv. Educ. Rev. 5 (1973).

"Q. Dr. Guthrie, would you recommend to this Honorable Court that it should accept this plan for the City of Detroit?

A. I would not.

Q. Would you tell the Court why?

* * *

A. If the effort is to eliminate a segregated school system for whatever reason, if that is the intent that it is my belief that this will not eliminate a segregated school system, but rather *will lead only to greater segregation in the City of Detroit*. . . . . should such a desegregation plan be announced, and every year thereafter when it is implemented, my prediction would be that the number of white persons residing in the city of Detroit and the number of white children available to attend its schools would decrease. I base that prediction on the behavior of whites in other desegregated situations, primarily in the south, but also in the north of this nation.

When faced with the possibility that their children will be attending schools which have a large proportion of blacks and whites, frequently, very frequently, they will leave."[140]

Under these circumstances, the admonition of this court in *Green, supra*, is dispositive.

> "If there are reasonably available other ways. . .promising speedier and more effective conversion to a unitary, nonracial school system 'freedom of choice' must be held unacceptable." *Id.* at 441.

In addition to failing to convert to a unitary, non-racial school system, a Detroit-only plan will lead to an invidious, judicially sanctioned resegregation of the Detroit school system

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[140] Testimony of Dr. James Guthrie (IVa 111-112). Dr. Ritzenhein also rejected Dr. Foster's Detroit-only plan for similar reasons:

"Q. Do you believe that a plan that puts 65 percent black children and 35 percent white children in each school would desegregate Detroit?

A. It would not.

Q. Why:

A. It would result in a re-segregated situation." (IVa 57).

rather than dismantling the dual nature of the schools and must be rejected.[141]

Tangible proof of the futility of employing a Detroit-only plan to remedy the massive segregated condition in Detroit schools was the expert testimony of Dr. Guthrie relative to the well established "tipping point" concept, viz., the black-white pupil population ratio at which white students begin to leave the school system. Under the Plaintiffs' proposed Detroit-only plan for the 1972-73 school year, the approximate theoretical racial ratio goal would have been 65% black and 35% white studetn enrollment. Today, however, the white student population has declined to 28% and promises to continue its downward trend. Dr. Guthrie fixed the "tipping point" in a band where the black student population attains a percentage of between 35% and 55%. After this tipping point is reached, the following occurs:

> ". . . [s]omewhere between 35 and 55 percent black. When a school is more than that, then somewhere in that band whites become fearful for some rational and irrational reasons and when can they leave." (IVa 109).

Dr. Ritzenhein confirmed Dr. Guthrie's "tipping point" concept and that there would be a decrease in white enrollment under a Detroit-only plan, thus causing resegregation in the Detroit school system. (IVa 57-58).

Resegregation and racial identifiability were prime reasons for the District Court's rejection of Detroit-only plans:

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[141] In *Green, supra* this Court reaffirmed that a plan must bar future segregation:

> "We bear in mind that the Court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as *bar like discrimination in the future.*" [emphasis added] 391 U.S. 433 n.4 (citing *Louisiana* v. *United States*, 380 U.S. 145, 154 (1965)).

See also Goss v. *Board of Education*, 373 U.S. 683 (1963), free transfer provision held unacceptable; *Davis, supra*, free transfer plan held ineffective; *Swann, supra*, pairing and geographic zoning rejected due to ineffectiveness; *Monroe* v. *Board of Commissioners*, 391 U.S. 450 (1968), free transfer plan rejected because of ineffectiveness.

"7. The plan would make the Detroit school system more identifiably Black, and leave many of its schools 75 to 90 per cent black.

"8. It would change a school system which is now Black and White to one that would be perceived as Black, thereby increasing the flight of Whites from the city and the system, thereby increasing the Black student population."[142]

Bluntly stated, a Detroit-only plan will assure but one result: a judicially sanctioned segregated school system. This Honorable Court has refused to sanction segregated school systems in the South, why should it now do so in the North?

A DETROIT-ONLY PLAN LEAVES THE DETROIT SCHOOL SYSTEM PERCEPTIBLY BLACK.

State-fostered racial perceptions and isolation have been a part of school desegregation law for twenty years. These concepts were first enunciated in *Brown I, supra*, when this Honorable Court stated:

"To separate them [blacks] from others of similar age and qualification solely because of their race generates a feeling of inferiority as to their status *in the community* that may affect their hearts and minds in a way unlikely ever to be undone.

* * *

Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of law; for the policy of separating the races is usually interpreted as denoting the inferiority of a negro group. A sense of inferiority affects the motivation of a child to learn." 347 US at 494. [emphasis added].

In *Brown I*, and the sourthern school desegregation cases which have followed, this Honorable Court has held that the operation of black schools within (or along side of) white school

[142] Findings of Fact and Conclusions of Law on Detroit-only Plans of Desegregation (55a).

systems in the relevant community, denies equal protection of the law.

When the perceptions of state-fostered racial separation, such as was condemned in *Brown I*, appear, they must be eliminated "root and branch." A Detroit-only plan would be no remedy at all. Such a plan would leave the Detroit school system with the vestige of racial identifiability and all the invidious stigmatic connotations attendant thereto.

It is a simple fact that Detroit is only a part of the larger relevant metropolitan Detroit community.[143] Whether one's index is subjective perception or objective indicia, the community that is centered in Detroit includes at least parts of Wayne, Oakland and Macomb counties, which comprise the proposed metropolitan desegregation area.

The tri-county metropolitan area has been labeled, by the Bureau of the Census, as a Standard Metropolitan Statistical Area largely on the basis of the high degree of interaction among the populus of the three counties. The State of Michigan has recognized the interdependence of the citizens of the whole area by establishing the Southeastern Michigan Transportation Authority (SEMTA), and the Huron-Clinton Metropolitan Valley Authority. There is also the Metropolitan Detroit Water System which serves the tri-county area.

The local governments have recognized their interdependence in creating the Southeastern Michigan Council of Governments (SEMCOG). The various highway planners have recognized it in developing the network of interstate highways that lead into Detroit from all directions. And indeed the school authorities of the State have recognized it, at least in part, by creating the Intermediate School Districts in each county.

Subjective perceptions coincide with these objective data. Local residents cross political lines casually in shopping, commuting to work, seeking recreation and seeking private or collegiate educations. Dr. Robert Green, an expert witness,

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[143] Testimony of Roger Marz (IVa 32-40).

testified as to these perceptions when he referred to the stream of whites driving down the freeway from Southfield, Michigan to Detroit in the morning rush hour and when he described how Detroit-educated whites have fled to Oak Park, Livonia and Bloomfield Hills, suburbs of the City of Detroit. (IIa 102-03).

This perception works both ways. For while approximately 20,000 blacks work in Warren, Michigan, a suburb of Detroit, there are only a handful of black residents of that city. The children of those black working families have been and are effectively excluded from the virtually all-white schools located within the city of Warren.[144] These children have been and are effectively contained in the racially identifiable Detroit school system.

Just as black children in a 90% black school still perceive their school as identifiably black, even though all children in that attendance zone go to the same school, (R. 1023-25), so also will children in a 60%-80% black Detroit school even though it is no different than any other school in Detroit – precisely because they know there are nearby suburbs full of white youngsters receiving educations in all-white schools.[145]

Indeed, it would be a most unusual third grader of any race who could stand on Tireman Street, a boundary line between Dearborn, Michigan (a white suburb immediately adjacent to Detroit which is bounded on three sides by the Detroit school system) and Detroit and explain that a political boundary line rather than race was the reason that the white children south of Tireman attended a white school in Dearborn and the black children north of Tireman attended a black school in Detroit.

A child's perception of a metropolitan community is conditioned by the communications media to which he is exposed and his perception of the metropolitan community of which he is a part.

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[144] Warren High School has a black pupil population of 0.2% and Warren Woods High School has a black pupil population of 0%. P.M. 13 (Va, 106).

[145] Testimony of Dr. James Gunthrie, (IVa 110, 111, 113, 117).

> "In order for him to get that conception he has to have two opposing pieces of information constantly or sometimes crossing his mind. One set of information is that he goes to school with children who are primarily black or lives in a neighborhood which is primarily black, yet his picture of the world which is presented to him by the newspapers, by television, by advertising, is that it is primarily a white world. Yet he sees himself living in all most totally or proportionately black world." (IVa 110) (Dr. Guthrie).

There is no record evidence on which to base an assumption that the perception of the community felt by a black child in Detroit is limited to the irregular boundaries of the Detroit School District[146] and further limited only to the racial composition of the students in the Detroit school system. On the contrary, it is obvious in a community that is so inter-related between city and suburbs that the child would be wondering why his school does not reflect the total racial composition of the metropolitan community.[147] In response to a question placed to Dr. Guthrie concerning the affect on a black child of moving him from a school which had 45% black enrollment to a 75% black enrollment, and the comfort that a child might receive in knowing that everyone else was being treated the same, Dr. Guthrie stated:

> "He would find himself in a racially-identifiable school. It's a black school. He must be torn between the tension of knowing that that is a school which is a majority black and society or the surrounding area isn't. What is he to say to himself, 'It's all right that they grouped me this way. It's all right because they grouped other people that way.' I personally don't find that persuasive, nor logical.

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[146] The school districts that abut these irregular boundaries, including Grosse Pointe and Dearborn, are gerrmandered into Detroit to such an extent that these districts are literally on top of the black core of the Detroit school district.

[147] Testimony of Dr. James Guthrie (IVa 116,107) stating that a typical perception of Detroit is that it is a black school system, and that under a Detroit-only plan which would have led to a 65%-35% black-white ratio in 1972-73, the schools in the system would be perceived by the child as being black.

Q. How about moving a child from a 90% black school to a 75% black school? Would he find comfort in the fact – would your answer be the same?

A. My answer would substantially be the same. If he should find comfort in that, he would have to have an *extraordinarily sensitively calibrated comfort meter inside of him,*"[148] (Emphasis added).

The perception of a black child is not a perception obtained in a vacuum. Racial identifiability, and the perceptions condemned in Brown I, are no less invidious in Northern schools than in Sourthern schools with a history of racially separate facilities. In the North, racial identifiability emerges in the context of an urban single school system which is a part of an interrelated metropolitan area surrounded by many Balkanized, gerrymandered suburban school systems.

The District Court, after forty-one days of trial, found pervasive state violations of the constitutional rights of 280,000 Detroit school children. After hearing the evidence on a Detroit-only remedy, he reached the stark reality that any Detroit-only plan would result in the continued racial identifiability of the Detroit school sytem as black and would guarantee resegregation. The trial judge realized that with a Detroit-only remedy he would start with 0 and would end with 0 – no desegregation.

The District Court had no choice but to order a metropolitan remedy.

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[148] Testimony of Dr. James Guthrie (IVa 121).

V

A METROPOLITAN REMEDY IS REQUIRED TO EFFECTIVELY REMEDY *DE JURE* SEGREGATION IN THE DETROIT SCHOOL SYSTEM

SCHOOL DISTRICT LINES MAY NOT PREVENT A CONSTITUTIONAL REMEDY

Upon finding that no Detroit-only desegregation plan "promises realistically to work and work now", *Green* v. *County School Board of New Kent County*, 391 U.S. 430 (1968), the District Court turned to the consideration of a metropolitan desegregation plan.

The District Court had before it the phenomenon of the Detroit school district surrounded by eighty-three relatively small school districts whose boundaries in many cases were not coterminous with any municipal boundary lines and in some cases straddled county lines. The Court found that many of these districts and their white schools are time and distance-wise very close to the Detroit school district and Detroit schools. Seventeen school districts are adjacent to the Detroit school district. A majority of Petitioner school districts are within eight miles of the now existing boundaries of the Detroit school district.

When the District Court ruled in favor of a metropolitan desegregation remedy, it was simply responding to this Honorable Court's directive to "make every effort to achieve the greatest possible degree of actual desegregation." *Davis* v. *Board of School Commissioners of Mobile County*, 402 U.S. 33, 37 (1971).

The legal path for the cross district desegregation of school districts (when needed) was first cleared by this Honorable Court in the voting rights cases. Those decisions established that constitutional requirements supercede the importance of maintaining state created legislative districts. *Reynolds* v. *Sims*, 377 U.S. 533 (1964); *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960).

The concept of ignoring the division lines of political units for purposes of guaranteeing constitutional rights has been extended to school districts on the rationale that school district lines

within a state are established for political convenience. *Lee* v. *Macon County Board of Education*, 448 F.2d 746, 752 (5th Cir. 1971); *United States* v. *State of Texas*, 447 F. 2d 441 (5th Cir. 1971).

The Sixth Circuit, following the direction of this Honorable Court, affirmed these principles in the instant case:

> "We reject the contention that school district lines are sacrosanct and that the jurisdiction of the District Court to grant equitable relief in the present case is limited to the geographical boundaries of Detroit. We reiterate that school districts and school boards are instrumentalities of the State. *See Cooper* v. *Aaron*, 358 U.S. 1, 16 (1958). As early as *Brown II* the Supreme Court pointed out that:
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> > '[T]he courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, . . .' 349 U.S. 300-01.
>
> "The Supreme Court has held that school boundary lines cannot be changed or new school systems created where the result is a larger imbalance in racial ratios in school systems where all vestiges of enforced racial segregation have not been eliminated. *United States* v. *Scotland Neck Board of Education*, 407 U.S. 484 (1972); *Wright* v. *Council of the City of Emporia*, 407 U.S. 451 (1972). This is true regardless of 'dominant purpose.'" *Wright* v. *City of Emporia*, 407 U.S. 462.
>
> "If school boundary lines cannot be changed for an unconstitutional purpose, it follows logically that existing boundary lines cannot be frozen for an unconstitutional purpose." *Bradley* v. *Milliken*, 484 F.2d 215, 250 (6th Cir. 1973) (174a).

In Michigan, because local school districts are mere instrumentalities and the agents of the State, subject to pervasive state control, there are no legal impediments to crossing school district

lines. In fact, the record reveals that Michigan now transports students daily across district lines for purposes other than desegregation.[149]

The suggestion that a *de jure* finding must be made against the Petitioners school districts is totally untrue.[150] As the Courts below clearly indicated, education in Michigan is solely a function of the State. Local school districts are mere creatures of the State acting as agents or instrumentalities of the State under pervasive State control. Thus, if the Detroit Board of Education committed *de jure* acts of segregation, as an agent or instrumentality of the State, its actions constituted State action, and the State of Michigan is responsible for a desegregation remedy. If the State of Michigan alone committed *de jure* acts of segregation, again, the State is responsible for a desegregation remedy and may include its political subdivisions, Petitioner School Districts, in that remedy. In fact, the Courts below found that both the State of Michigan and the Detroit Board of Education had committed *de jure* acts of segregation.

It makes no difference what basis was used for drawing Petitioner school districts' boundary lines. Those districts are an integral part of Michigan's system of education and when there is a constitutional violation in that system they must become part of the remedy. If the State of Michigan is responsible for a remedy because of the State's own actions, the actions of its agent Detroit Board, or the actions of both, the State of Michigan can properly be ordered to implement a remedy that involves the school districts within the metropolitan Detroit community. Those school districts are State controlled agents created by the State for its convenience. They are nothing more than the State of Michigan itself.

There was no need for *de jure* acts on the part of Petitioner school districts since the State itself had been successful, by its

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[149] *See*, tesimony of Eugene Kuthy. (IVa 22), discussing cross district transportation in Genesee County, Michigan; testimony of Harold Wagner, Supervisor of the Pupil Transportation Section, Michigan Department of Education, (Va 202), "there are none of these boundary rules that do apply to transportation of Special Education pupils". *See also*, State Report to Judge Roth.

[150] *See*, discussion pages 40-52, *supra*.

actions and inaction, in containing the majority of the black students in the metropolitan Detroit community within the Detroit school system.

Petitioners William G. Milliken, Grosse Pointe Public School System, Allen Park Public Schools, *et al.*, repeatedly cite *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), as authority for the proposition that a remedy may not extend beyond the limits of the Detroit school district unless constitutional wrongs have been committed in each neighboring district. The phrase most commonly used by Petitioners is "[a]s with any equity case, the nature of the violation determines the scope of the remedy." This quotation, however, is meaningless when quoted out of context. In its proper context, it supports a position just the opposite of that proffered by Petitioners. As this Court said in *Swann:*

> "School authorities are traditionally charged with broad power to formulate and implement educational policy and might well conclude, for example, that in order to prepare students to live in a pluralistic society each school should have a prescribed ratio of Negro to white students reflecting the proportion for the district as a whole. To do this as an educational policy is within the broad discretionary powers of school authorities; *absent a finding of a constitutional violation*, however, that would not be within the authority of a federal court. As with any equity case, the nature of the violation determines the scope of the remedy. In default by the school authorities of their obligation to proffer acceptable remedies, a district court has broad power to fashion a remedy that will assure a unitary school system." [emphasis added] 402 U.S. 16.

Once a constitutional violation has been found, then the ingredients necessary to correct that violation are determined. Here, serious constitutional violations by the State acting in conjunction with, or through, its agent, Detroit Board of Education, have resulted in the racial isolation of 180,000 black school children whose isolation will continue unless the State mandates the participation of its suburban school districts in a remedy. If such a remedy is not effectuated then the State can masquerade behind

its State created school district lines to perpetuate segregation. Inclusion of school districts, who have not committed *de jure* segregation, in the remedy has been consistently approved by the Federal Courts[151] To suggest otherwise in the instant case would result in the finding of a constitutional violation without a remedy.

In context, the statement that "[o]ne vehicle can carry only a limited amount of baggage," *Swann, supra* at 22, means that school desegregation is to be used to eliminate a dual system and not to deal with "myriad factors of human existence which cause discrimination in a multitude of ways on racial, religious, or ethnic grounds."[152] We note that "the target of the cases from *Brown I* to the present was the dual school system". That is the target in this case. A metropolitan plan is the only possible remedy that can rectify what the Courts already have found to be a dual, state authorized school system in Detroit.

BRADLEY v. *RICHMOND* DOES NOT APPLY

The Fourth Circuit's opinion in *Bradley* v. *School Board of the City of Richmond*, 462 F.2d 105 (4th Cir. 1972), *aff'd* 412 U.S. 92 (1972) is neither controlling nor persuasive here. The issue in *Richmond*, as stated by the Fourth Circuit, was:

> "May a United States District Judge compel one of the states of the union to reconstruct its internal government for the purpose of achieving racial balance in the assignment of pupils to public schools." 462 F.2d 106.

The Fourth Circuit answered that issue in the negative based on Virginia law and the fact that *all* the systems involved were unitary.

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[151] *Lee* v. *Macon County Board of Education*, 448 F.2d 746 (5th Cir. 1971); *United States* v. *Texas*, 330 F. Supp. 235 (E.D. Texas 1971), *supp.* 321 F. Supp. 235 (E.D. Texas), *aff'd*, 447 F.2d 441 (5th Cir. 1971), *cert. denied sub nom., Edgar* v. *United States*, 404 U.S. 1016 (1972). In *U.S.* v. *Texas* the court ordered the annexation of two districts, one all black and the other predominantly white, to a third district, also white. Neither of the white districts had been found guilty of maintaining *de jure* school systems, but the court nevertheless required the Texas Education Agency to include them in the remedy.

[152] *Swann, supra* at 22.

There was no constitutional violation found in *Richmond*. By contrast, in the instant case the Courts below have found constitutional violations. Furthermore, the District Court in the instant case did not reconstruct internal government. All the District Court in the instant case required was reassignment of some students across existing school district lines. The District Court, as affirmed by the Court of Appeals, only required the State of Michigan to do what it had done for other educational purposes not related to desegregation, *viz.*, transporting students across school district lines. As previously noted, a comparison of Virginia school law with Michigan school law will clearly establish that in Michigan school district lines are not sacrosanct and are controlled by the State.

THE RELEVANT COMMUNITY IS THE METROPOLITAN DETROIT COMMUNITY

The relevant community for an appropriate remedy in the instant case is not confined to the City of Detroit, rather it comprises the politically, socially and economically interrelated metropolitan Detroit community:

A. Many pupils in the metropolitan Detroit community already cross school district lines to attend school or receive educational services on an inter-district basis. (79-80a).

B. The metropolitan Detroit area has been labeled by the Bureau of the Census as a Standard Metropolitan Statistical Area because of the high degree of interaction among the populace of the tri-county (Wayne, Oakland and Macomb) area. (80a).

C. Recognizing the interdependence of its citizens, the Detroit metropolitan community has joined together in establishing the Metropolitan Detroit Water System. (80a).

D. The metropolitan Detroit community has joined together to establish a joint transportation system known as the Southeastern Michigan Transportation Authority (SEMTA). (80a).

E. The metropolitan Detroit community has joined together in establishing a Metropolitan Sewage System. (80a).

F. The metropolitan Detroit community has joined together in establishing a metropolitan park authority known as the Huron-Clinton Metropolitan Authority. (80a).

G. The local governments have recognized their interdependence by creating the Southeastern Michigan Council of Governments (SEMCOG). (80a).

H. The school authorities have recognized the metropolitan nature of education by creating intermediate school districts which provide educational services on an inter-district basis in each of the three counties. (80a).

I. A number of school districts encompass more than one city. For example, Petitioner, Grosse Pointe Public School System, encompasses five separately incorporated cities (Grosse Pointe Park, Grosse Pointe City, Grosse Pointe Farms, Grosse Pointe Woods, and Grosse Pointe Shores) and part of a sixth (Harper Woods), most of which have at least one common indistinguishable pavement border with the City of Detroit. (80a).

J. The adjacent Harper Woods School District does not cover the entire City of Harper Woods. The adjacent Warren Fitzgerald School District does not cover the entire City of Warren. All are separated from *Detroit by invisible* boundary lines. (80a).

K. Thirty-three point eight percent (33.8%) of workers living in Oakland County were employed in Wayne County and fourty-four point two percent (44.2%) of workers from Macomb County worked in Wayne County, Wayne County being the county in which Detroit is the dominant city. (IVa 37).

L. The record reveals that many suburbanites, though not living within the corporate city limits of Detroit, conceive themselves as "Detroiters". (IVa 40).

The white students of the metropolitan Detroit community, who like Detroit school children are educated by the State, surround the State-contained black school children of Detroit. Such racial isolation was condemned by this Honorable Court nineteen years ago in *Brown* v. *Board of Education of Topeka, (Brown I)*, 347 U.S. 483 (1954) when the Court said:

> "To separate them (blacks) from others of similar age and qualification solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." 347 U.S. 494.

A Detroit-only plan leaves Detroit school racially identifiable as black and perceived as black, whereas a metropolitan remedy would effectively desegregate Detroit schools and convert them to "just schools" without racial identifiability. *Brown* v. *Board of Education of Topeka, (Brown II)*, 349 U.S. 294 (1955) offers lower courts guidelines as to the methods of desegregation:

> "To that end, the Courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a non-racial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems. They will also consider the adequacy of any plans the Defendants may propose to meet these problems and to effectuate a transition to a racially nondiscriminatory school system." 349 U.S. 300-301.

The District Court and the Sixth Circuit, both in panel and *en banc*, came to realize that the only way unconstitutional racial school isolation, in the extensively interrelated metropolitan Detroit community, can be eliminated is through a metropolitan desegregation remedy.

A METROPOLITAN DESEGREGATION REMEDY IS EDUCATIONALLY SOUND AND PRACTICAL

There are several elements that must be present for a desegregation plan to work. Every school, or almost every school,

should contain a mixture of the races that roughly approximates the make-up of the student community as a whole. *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971); *Davis* v. *Board of School Commissioners of Mobile County*, 402 U.S. 33 (1971). The plan should be educationally sound. *Swann, supra.* The plan must be practical. *Swann, supra ; Davis, supra.*

Swann pointed out that "mathematical ratios", *i.e.*, racial mix, may be "a starting point in the process of shaping a remedy" but is not an "inflexible requirement." In the instant case, the District Court found that in the metropolitan Detroit community the ratio of whites to blacks was approximately 75% to 25% and the Court employed this as a flexible ratio similar to the ratio used in *Swann*.

No desegregation plan can function unless it is educationally sound. The educational soundness of an integration plan is to a large extent dependent upon how effectively it gives children an opportunity to have stable multi-racial experiences in groups composed substantially like the surrounding community. All the educators that testified on this record agreed that a metropolitan plan is educationally sound. (82-85a) (IVa 117-19).

As explained in the discussion on transportation, *infra*, the proposed metropolitan plan is most practical because it takes into consideration the peculiarities of metropolitan Detroit geography to minimize transportation distances and times. The plan also makes optimum utilization of existing faculties.

Under existing Michigan law, pupils can be educated in districts other than those in which they reside.[153] Michigan statutes authorize a variety of arrangements whereby school districts may educate their pupils in other districts.[154] State as well as local

[153] In fact, the current Michigan Constitution was expressly drafted to permit non-resident attendance. The Honorable George Romney, Vice-President of the Constitutional Convention and Chairman of an education subcommittee (and subsequently Governor of Michigan) presented the formal report of the Education Committee to the Convention and immediately added: "In other words, the language, as explained in the first two paragraphs, permits school districts to arrange for the education of their children in other school districts, but it does require them to make provision for education of their children from the kindergarten through grade 12."

[154] MCLA §§340.24; .69; .121(c) and (d); .330(m) (1973-74 Supp.); 340.359; .582; .582(a); .590; .590(a); .590(b); .591; .592; .761; .763 (1973-74 Supp.); and .771(a).

funds may be expended for non-resident education.[155] The normal method of arranging for non-resident attendance is by contractual agreement between the districts.[156] In addition, contracts may be arranged between suburban school districts and any of the three intermediate school districts over-lapping the metropolitan Detroit area who are already authorized to supervise and coordinate the education of handicapped children[157] and vocational education on a gross district basis.[158]

Teacher reassignments are similarly manageable under present Michigan law. Legislative interest in this area has already been shown by the recent enactment of a statute protecting the interest of a group of teachers transferred from one district to another:

> Act 101, § 51(4), Mich. Pub. Acts of 1973: "Special education personnel transferred from 1 school district to another to implement the school code of 1955, as amended, shall be entitled to all rights, benefits, and tenure to which the person would otherwise be entitled had he been employed by the receiving district originally."

As a recipient of federal aid to education, the State Board of Education has a duty under Title VI of The Civil Rights Act of 1964, 42 U.S.C. § 2000(d) to maintain unitary schools, a requirement which the Courts below have mandated in the instant case. Michigan has revised its school code to provide the State Board with whatever powers it may need to insure compliance with Title VI. M.C.L.A. § 388.1031 provides:

> "Sec. 1. The state board of education may take any necessary action consistent with state law to comply with the provisions of Public Law 531 of the 83rd Congress, known as the 'cooperative research act' to encourage research and related

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[155] MCLA §§ 340.24; 340.69; 340.121(d), 340.582(a), 340.761, 340.763 (1973-74 Supp.), 340.771(a), (1973-74 Supp.), 340.33(m) and (q) (1973-74 Supp.); Act 101, § 111 of Mich. Pub. Acts of 1973.

[156] *See, Jones* v. *Grand Ledge Public Schools*, 349 Mich. 1, 84 N.W. 2d 327 (1957).

[157] MCLA § 340.771 (a) (1973-74 Supp.).

[158] MCLA § 340.330 (m); and *see* (1973-74 Supp.)

activities which are of significance to education and with the provisions of Public Law 10 of the 89th Congress, known as the 'elementary and secondary education act of 1965' . . . ."

In summary, the Detroit Board of Education believes that a metropolitan remedy is constitutionally mandated and statutorily available under Michigan public school law. Perhaps the most eloquent statement of its position was made by the District Court on July 19, 1972:

"I think it should be clearly understood, however, that in my disposition of the motions before me today this Court does not retreat from nor abandon . . . our conclusion that any plan for the desegregation of the public schools of the City of Detroit would not accomplish desegregation and that only a Metropolitan Plan of desegregation would accomplish the desegregation of those schools.

"The Equal Protection clause of the Fourteenth Amendment to the Constitution of the United States, as I read it, is not geographically limited. It is difficult for this Court to believe that any higher judicial authority of the United States would or, for that matter Constitutionally could, engraft on that amendment any such geographical limitation. The vindication of the Plaintiffs' Constitutional right to equal education cannot be denied on the claim of alleged sovereign powers of local school districts." (R. 1947-48).[159]

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[159] *See also, Newburg Area Council, et al.* v. *Board of Education of Jefferson County, Kentucky, et al.*, Civil Nos. 73-1403, 73-1408 (6th Cir. filed Dec. 28, 1973) Slip Op. at 11.

VI

THE TRANSPORTATION SYSTEM PROPOSED IN THE METROPOLITAN REMEDY CAN BE PRACTICAL AS TO REASONABLE DISTANCES AND TRAVEL TIMES AND WILL EFFECTIVELY DESEGREGATE.

In *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), this Honorable Court held student transportation to be one tool of desegregation and declared that "desegregation plans cannot be limited to the walk-in school," 402 U.S. 30. The concurring opinion in *Keyes* v. *School District No. 1*, 413 U.S. 189 (1973) noted: ". . . Yet the court in *Swann* was unquestionably right in describing bus transportation as 'one tool of school desegregation' . . . [citation omitted] 413 U.S. 244.

On the same day the *Swann* decision was handed down, this Honorable Court upheld a District Court decision that the North Carolina antibusing statute was unconstitutional in *North Carolina State Board of Education* v. *Swann*.[160] In invalidating the legislation the unanimous opinion stated:

> "As noted in *Swann*. . .bus transportation has long been an integral part of all public educational systems, and it is unlikely that a truly effective remedy could be devised without continued reliance upon it." *North Carolina State Board of Education, supra* at 46.

Anywhere from 39% to two-thirds of all American children today ride buses to their schools.[161] The scope of student transportation in Michigan is no different.

"The transporting of elementary and secondary school youth for educational purposes within the State of Michigan is by no means a new phenomenon. In many communities; rural, urban and suburban; riding a school bus is almost a way of life.

"Michigan school districts have for many years either operated their own bus fleets or contracted with commercial transpor-

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[160] 402 U.S. 43 (1971)

[161] *Swann*, 402 U.S. 30; *Keyes*, 413 U.S. 189, 24, n. 22.

tation companies and individual carriers for purposes of transporting pupils. Students have been traditionally transported in order to successfully bring about school district consolidation; *to effectively and efficiently utilize available classroom facilities (within and/or across district lines);* to avail pupils of special educational programs and services offered only at certain school sites; to assure pupil safety; and, of course, to eliminate the necessity of having students walk excessive distances.

"During 1969-70 (the most recent year for which sufficient and adequate data has been collected and audited), 508 of Michigan's then 638 school districts provided transportation services for approximately 790,000 pupils. This service required the use of more than 10,000 motor vehicles traveling in excess of 83,000,000 miles. The cost to those school districts providing transportation services was $43,139,356. The cost to the districts is, however, offset under the provisions of Act No. 312 of the Public Acts of 1957, State Aid for Transportation of School Children. In 1969-70, the 508 school districts operating district-owned vehicles and/or leasing commercial carriers were reimbursed $28,267,927 for providing transportation services for their "eligible" students. Of the 10,028 school buses operating in 1969-70, 8,771 were district-owned vehicles which transported over 745,000 pupils. Table 10, Transportation Comparison, shows the number of pupils transported during the past twenty years and clearly indicates that *the trend is and continues to be in the direction of reducing the numbers of school districts* and increasing the numbers of pupils transported by district-owned vehicles..." [162] [emphasis added]

The foregoing language was written by the Michigan State Board of Education and submitted to the District Court as part of the State's metropolitan plan for desegregation.[163] The State reported to the Court that in the year 1969-70, over 790,000 Michigan students were transported to their schools, "within and/or across district lines."

[162] Metropolitan One-Way Student Movement and Reassignment Plan, as submitted to Federal Court Judge Stephen J. Roth by the Michigan State Board of Education, February 1, 1972, pages 26-27.

[163] Note that the State acknowledges in its report to Judge Roth that it does provide cross district transportation for educational purposes *other* than school desegregation, *see also* n. 113, *infra.*

The District Court found that in Wayne, Macomb and Oakland Counties (parts of each of these three counties are covered by the proposed metropolitan desegregation plan), more than 300,000 pupils rode to school on some kind of bus transportation. Of these, 60,000 rode the regularly scheduled public transit vehicles.[164]

In the State of Michigan, 35% to 40% of all school children are transported to school. In comparison, the metropolitan Detroit area school districts eligible for state reimbursement for transportation costs in 1969-70 transported from 42% to 52% of their school children. (Petition for Ceriorari, App. 72a). These suburban transportation figures indicate that student transportation is as popular, and at least as extensive, in an urban-suburban area as in the rural areas.

The State of Michigan has no problem in providing transportation for almost three quarters of a million students for non-desegregation purposes. When educational necessity dictates, the State of Michigan has no problem implementing cross district bus transportation.[165]

However, when student transportation for purposes of protecting constitutional rights is involved, the Michigan Attorney General attempts to "testify" as to the alleged unreasonably massive scope of an as yet undeveloped plan of metropolitan student

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[164] *See* Appendix to Petition for Certiorari, pp. 72a-73a. In Detroit, approximately 41,000 students are transported via public transportation and chartered bus at the expense of the Detroit school system, and Detroit students.

[165] *See* testimony of Eugene Kuthy (IVa22), wherein cross district transportation occurs in Genessee County, Michigan; testimony of Harold Wagner, Supervisor of the Pupil Transportation Section, Michigan Department of Education, (Va202), "there are none of these boundary rules that do apply to transportation of Special Education pupils." *See also*, State Report to Judge Roth, n. 111 *supra*.

The most obvious example of cross district transportation, however, is the instance of the Carver District (North of the Detroit district) transportation of black children into Detroit's Northern High School. This cross district transportation existed for several years, *see* pages 65-67, *supra*.

transportation [166]. We respectfully remind this Honorable Court that there is no plan of desegregation to review. Hence, any speculation as to the breadth or depth of a cross district transportation plan is unfounded.

The sheer size of any desegregation area is in and of itself, not the sole criterion by which to judge the propriety of a transportation remedy. For example, in *Swann* this Court approved a transportation plan that involved a desegregation area of 550 square miles; in Jacksonville, Florida, the school district encompasses 846 square miles and under a desegregation plan, transports approximately 50% of its 111,000 students.

These figures are to be compared with the tentatively proposed metropolitan Detroit area desegregation plan, which if adopted totally, according to the Brief of Petitioners William G. Milliken, *et al.* (p. 16), would cover an area approximately 700 square miles with no suggestion that anywhere near fifty percent of the students encompassed would be transported.

Let there be no mistake. The District Court moved with great moderation and ruled that student transportation was a permissible remedial tool only after entertaining extensive proofs. The Court rejected the Detroit Board's proposal of a desegregation area encompassing the 83 school districts in the tri-county area, for a more workable tentative desegregation area which includes the present 52 school districts surrounding Detroit's irregular boundaries. Seventeen of these school districts are adjacent to the City of Detroit and the balance are within eight miles of the Detroit city limits.[167]

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[166] *See* Brief of Petitioners William G. Milliken, *et al.* pages 53 and 63, wherein the numbers of school districts, square miles and pupil population of the tri-county area are emotionally characterized. But Petitioner fails to point out that student transportation is presently being provided by the State of Michigan in districts which already include more area than the tentatively proposed desegregation area. For example, Tahquamenon District in the Upper Peninsula of Michigan has 1,286 square miles where students are transported 114 miles round trip 81 minutes one way daily. Testimony of Harold Wagner (Va206).

[167] *See* Maps on Pages 115, 116, *infra*.

The compelling logic of cross district student transportation in this case is illustrated by the scale maps of the desegregation area provided on the following pages. Plate Number 1 depicts the tentative scope of the proposed metropolitan Detroit desegregation area. Plate Number 2 highlights examples of the manageability and facility by which students can be readily transported for desegregation purposes consistent with this Honorable Court's guidelines.

The District Court correctly concluded that the Detroit school district could be desegregated, and avoid resegregation, by a cross district student transportation plan which would not exceed the time and distance limitations of Swann.[168] The trial court placed a tentative ceiling of forty minutes' travel time on any plan to be developed. In many parts of the proposed desegregation area, far less travel time would be required.[169] The District Court noted:

> "This court weighs more heavily the judicially recognized concern for limiting the time and distance of pupil transportation as much as possible, consistent with the constitutional requirement to eliminate racially identifiable schools..." [170]

As the following maps illustrate, certain suburbs panhandle into the Detroit boundary lines. As a result, suburbs such as Dearborn on the west side of Detroit and Grosse Pointe on the east side of Detroit are within fifteen to twenty minutes from the heart of downtown Detroit by surface street travel, and their white suburban schools are substantially closer to black Detroit schools. The average distance for school bus trips in Michigan is eight and one-half miles, one-way.[171] However, a few examples of what can

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[168] 402 U.S. at 30.

[169] None of the travel time under the proposed plan would even come close to comparing with the extensive travel time presently existing in the metropolitan area. *See e.g.*, testimony of Eugene Kuthy (IVa15) wherein one hour bus trips are not unconventional; Harold Wagner (Va206-207), showing that the tri-county area bus transportation reaches upwards of one hour and fifteen minutes travel time, one-way; Kuthy (IVa11-12, 18, 23, 25-27) wherein a metropolitan transportation program offers certain economies of scale as opposed to the excess costs of operating a Detroit-only transportation system; Wagner (Va217) in suburban areas surrounding urban area, more economical and greater use is obtained from each bus. *See also*, f.n. 121, *infra*.

[170] (68a). *See also* (68a-70).

[171] *See* Testimony of Harold Wagner (Va225).

be accomplished with a cross district transportation plan (as illustrated on Plate 2, page 116, *infra*, covering four miles *or less*, one-way, dramatize the effectiveness and rationality of transportation as a remedy:

(1) On the east side of Detroit a black Detroit child living in the attendance area of such black Detroit schools as Southeastern High School, Remus Robinson Junior High School or Carstens Elementary School is equally capable of attending Grosse Pointe South High School, Pierce Junior High School or Defur Elementary School, in the all white Grosse Pointe school district. Indeed, a black Detroit child living near the boundary of Detroit would be able to attend a Grosse Pointe School by traveling an equal distance in the same time that he presently travels to go to his black Detroit school.

(2) On the west side of Detroit, a black Detroit child could live midway between the black Detroit MacKenzie High School or the McFarlane, Parkman, Barton or Sherrill Elementary Schools and by traveling an equal distance, attend the white Fordson High School or the McDonald or Maples Elementary Schools all in suburban Dearborn.

(3) On the northwest side of Detroit, it is possible for a black Detroit child to travel an equal distance in the same time period and attend either the black Detroit Mumford High School, Beaubian Junior High School or Higginbotham Elementary School, or attend the white Oak Park High School in suburban Oak Park, the white Ferndale High School in suburban Ferndale, or the white Best Elementary School in suburban Ferndale.

(4) On the northeast side of Detroit the same situation prevails. A black Detroit child could travel an equivalent distance in the same time and attend either the black Detroit Pershing High School, or the white Fitzgerald High School in suburban Warren or the white Hazel Park High School in suburban Hazel Park.

Although the foregoing represent but a few examples of the minimal travel time necessary to effectively desegregate the Detroit school district and prevent resegregation under a cross district transportation plan, there are other similar situations which can likewise be established.

In many instances a rerouting of existing suburban transportation routes, for the purpose of a metropolitan desegregation remedy, would result in cross district transportation routes which are shorter than existing intra-district routes. There are also possible economies not realized now by eliminating duplication of present service.[172]

The logic of a cross district transportation plan is manifest. In many instances it would result in *less travel time* than: (a) would occur in the assignment of a Detroit black child to a racially identifiable black Detroit school under any Detroit-only remedy, or (b) presently occurs in the transportation assignment of a suburban white child to a white suburban school.[173] Detroit-only transportation offers all of the worst features of an illusory remedy, *i.e.* transportation of black children to the few white areas left in Detroit, as opposed to the effective remedy of cross district transportation; *i.e.* desegregation of a dual system and its vestiges.

Even the "neighborhood school" concept defense does not reach constitutional proportions because in the proposed desegregation area it is nothing more than a myth. The fact that the State of Michigan provides extensive bus transportation to approximately 300,000 children in the metropolitan area clearly rebuts any contention that transportation of students would somehow disrupt the "neighborhood school" program.

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[172] *See* testimony of Eugene Kuthy (IVa11-12, 18, 23, 25-27), wherein a metropolitan transportation program offers certain economies of scale as opposed to the excess costs of operating a Detroit-only transportation system. *See also* Wagner testimony (Va217).

[173] *See* Petition for Certiorari, (67a), wherein the District Court found that, in Michigan and the tri-county area, pupils *often* spend upwards of one hour and up to one and a half hours one-way on a bus ride to school each day.

Furthermore, the trend of transportation in Michigan is increasing. The State has suggested that there will be more student transportation in the future and less walk-in neighborhood schools regardless of this case, due to the State's continuing policy of consolidation of school districts and the resulting transportation implementation.[174]

This Honorable Court's opinions in *Swann*, *North Carolina State Board of Education*, and the concurring opinion in *Keyes* recognize transportation as a valid remedial tool of school desegregation which shall be used with moderation and discretion in light of the mandate that "[t]he district judge or school authorities should make every effort to achieve the greatest possible degree of actual desegregation.[175]

The District Court made no rush to judgment. Rather, it correctly determined, as the maps clearly illustrate, that the constitutional right to equal protection of law cannot be made dependant upon the "fortuitous" circumstance of geography.

Since *Brown I*, the task of ensuring Fourteenth Amendment rights has resided with the judiciary. The lower courts have followed the dictates of the Constitution and sound discretion. Metropolitan transportation is the *only* effective remedy for the *de jure* segregated condition of the Detroit school district.

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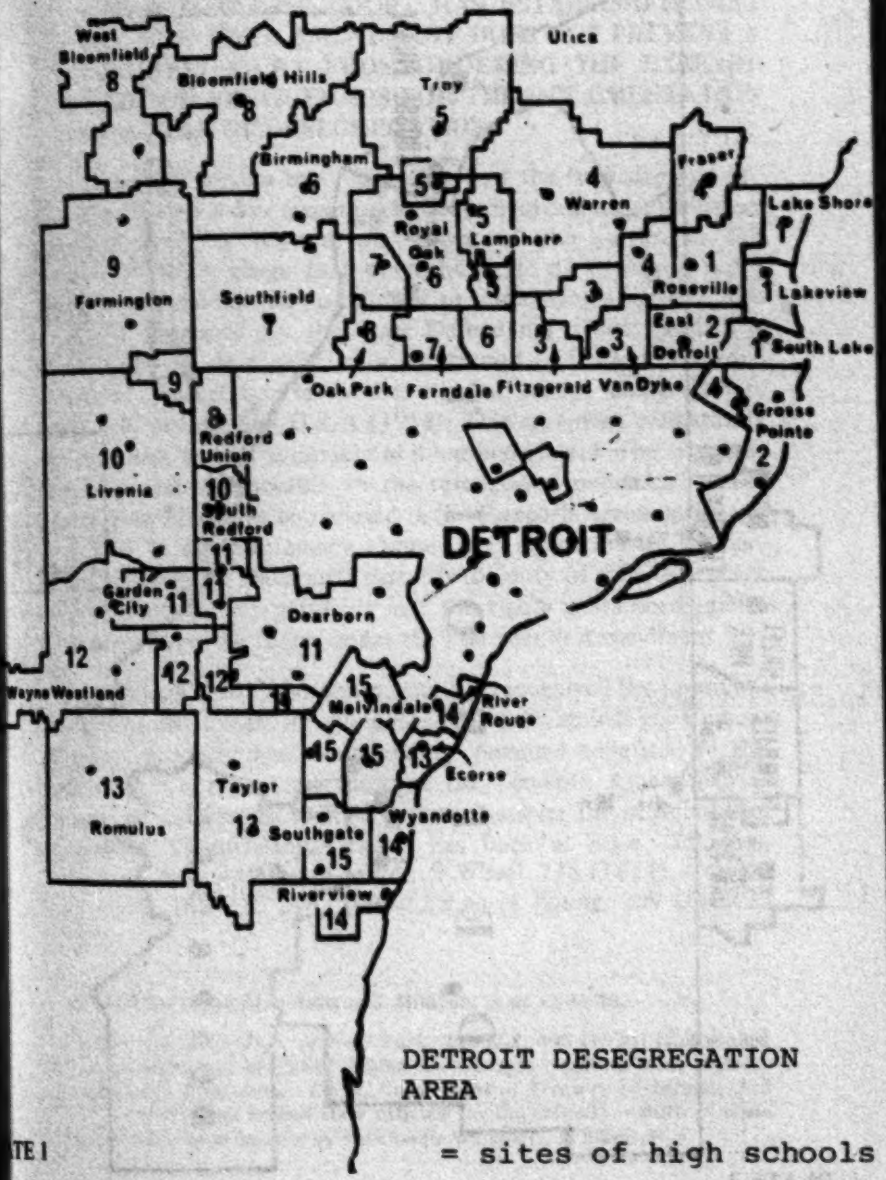
[174] See f.n. 110, *supra*, at p. 82.

[175] *Swann*, *supra* at 26. [emphasis added].



DETROIT DESEGREGATION AREA

= sites of high schools

PLATE 2

OAK PARK
FERNDALE
HAZEL PARK
FITZGERALD
DETROIT
GROSSE POINTE
DEARBORN
DETROIT RIVER
scale: 4 miles
1 2 3 4
N
KEY
LEGEND
1 = Black Detroit Schools

VII

THIS HONORABLE COURT HAS ESTABLISHED THAT THE ELEVENTH AMENDMENT DOES NOT PREVENT A FEDERAL COURT FROM ORDERING THE EXPENDITURE OF STATE FUNDS FOR THE IMPLEMENTATION OF A PLAN OF DESEGREGATION.

State Defendants have suggested that the financing and implementation of a desegregation remedy involving an expenditure of state funds is beyond the power of the parties to this cause.[176] They allege that only the State of Michigan, not a party to this lawsuit, has the power to implement a remedy. The argument presented by the State Defendants is not novel, it is often made by state officers in an attempt to frustrate remedial orders of federal courts in the area of school desegregation. *Cooper* v. *Aaron*, 358 U.S. 1 (1958). This argument consistently has been laid to rest as quickly as it has been raised. The source of this argument is traceable to the restrictions on judicial power *vis-a-vis* the States, as enunciated in the Eleventh Amendment and as related to the Supremacy Clause. It is countered by the consistent holdings of the courts that it is the duty of state officers to support both the Constitution and the rights guaranteed against infringement by the States under the Fourteenth Amendment.

Although this Honorable Court has recognized the immunity of a State from suits involving direct actions against government funds or property for complainants' personal benefit,[177] this Honorable Court has not deemed the Eleventh Amendment a serious impediment to judicial action whenever the protection of compelling Constitutional rights has been at issue. *See, e.g., Osborn* v. *Bank of United States*, 9 Wheat 738 (1824); *Graham* v. *Folsom*, 200 U.S. 248 (1906); *Ex parte Young*, 209 U.S. 123 (1908).

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[176] Brief for Petitioners William G. Milliken, *et al.* at 41-46.

[177] *See, e.g., In re State of New York*, 256 U.S. 490 (1920) (suit against State Superintendent of Public Works for damages resulting from tugboat operation) and *Ford Motor Co.* v. *Department of Treasury of Indiana*, 323 U.S. 459 (1945) (suit against state officials for tax refund) – Both of these cases are relied upon heavily by Petitioners William G. Milliken, *et al.*

In school desegregation cases, this Honorable Court has followed that rule.[178] In *Cooper* v. *Aaron*, 358 U.S. 1 (1958), a case which involved obstructionist tactics by the Governor and Legislature of the State of Arkansas against implementation of federal court ordered desegregation, this Honorable Court stated:

> "In short, the Constitutional rights of children not to be discriminated against in school admission on grounds of race or color declared by this Court in the *Brown* case can neither be nullified openly and directly by State legislators or State executives or judicial officers, nor nullified indirectly by them through evasive schemes for segregation whether attempted 'ingeniously or ingenuously.' " 358 U.S. at 17.

In *Griffin* v. *School Board of Prince Edward County*, 377 U.S. 218 (1964), a case which involved the closing of public schools and the operation of a system of private schools by Prince Edward County, Mr. Justice Black, speaking for a unamious Court, summarily dismissed the Eleventh Amendment argument:

> "It is contended that the case is an action against the State, is forbidden by the Eleventh Amendment, and therefore should be dismissed. The complaint, however, charged that State and county officials were depriving Petitioners of rights guaranteed by the Fourteenth Amendment. It has been settled law since *Ex parte Young*, [citation omitted], that suits against State and county officials to enjoin them from invading constitutional rights are not forbidden by the Eleventh Amendment." 377 U.S. at 228.

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[178] *See* Wright, LAW OF FEDERAL COURTS 186 (2d ed. 1970):

> "... [I]n some situations, as where a state has failed to desegregate its schools, affirmative action is required of the state to fulfill its constitutional obligations, and there would not be even the possibility of raising the constitutional issue [Eleventh Amendment] defensively ....
>
> * * *
>
> "... [I]n earlier years Ex parte Young was the foundation from which state utility regulation and welfare legislation were attacked. Today it provides the basis for forcing states to desegregate their schools[25] and reapportion their legislatures."

This Honorable Court went on to state that the District Court could force the various Defendants, the Board of Supervisors, School Board, Treasurer, Division Superintendent of Schools of Prince Edward County, the State Board of Education and the State Superintendent of Education – all of whom held duties which related "directly or indirectly to the financing, supervision, or operation of the schools" – to undertake positive action to reopen the public schools in Prince Edward County:

> "For the same reasons, the District Court may, if necessary to prevent further racial discrimination, require the Supervisors to exercise the power that is theirs *to levy taxes to raise funds adequate to reopen, operate and maintain without racial discrimination a public school system* in Prince Edward County . . . ." [emphasis added] 377 U.S. at 233.

Thus, it becomes readily apparent that the Michigan State Defendants, through the exercise of inherent powers which they possess as officers and instrumentalities of the State, can effectuate and implement the remedy ordered by the District Court in this cause.[179]

In *Evans* v. *Ennis*, 281 F.2d 385 (3rd Cir. 1960), a class action suit against the Delaware State Board of Education, the State Superintendent of Public Instruction, and three county boards of education to desegregate the public schools throughout the State of Delaware, the District Court, dispensing with contentions similar to those being advanced by the Michigan State Defendants in this cause, stated:

> "Doubtless integration will cost the citizens of Delaware money which otherwise might not have to be spent. The education of the young always requires, indeed, demands,

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[179] Should it subsequently be determined that the present Michigan State Defendants do not, in fact, have the inherent or specific powers to implement the remedy ordered by the District Court in this cause, the District Court may add such parties as are necessary to effectuate a complete and adequate remedy and to achieve "an orderly and fair administration of justice." *Griffin* v. *School Board of Prince Edward County*, 377 U.S. 218 (1964); Fed. R. Civ. P. 19, 21.

sacrifice by the older and more mature and resolute members of the community. Education is a prime necessity of our modern world and of the State of Delaware. We cannot believe that the citizens of Delaware will prove unworthy of this sacred trust." 281 F.2d at 389.

* * *

"This second element of the plan, if it is to be consummated, will necessitate the making of immediate estimates as to *future school facilities.* The making of such estimates is not a simple matter. Their creation will require the exercise of energy, skill, patience, and creative adaptability by the public school authorities, and, as we have indicated, *funds* to be *appropriated by the General Assembly of Delaware.* The duty imposed on the State Board of Education in this respect is as clear as is the responsibility confided to this court and to the court below to make certain that the mandate of the Supreme Court is carried out." 281 F.2d at 392.[180]

As the District Court correctly recognized in *Swann* v. *Charlotte-Mecklenburg Board of Education,* 318 F. Supp. 786 (W.D. N.C. 1970), the implementation of procedures necessary to assure any Constitutional rights of the individual[181] may place, directly or indirectly, additional financial burdens upon the State, even though it is not a formal party to the proceedings:

"However, if a Constitutional right has been denied, this court believes that it is the Constitutional right that should prevail against the cry of 'unreasonableness'... The unreasonableness of putting the State to some expense cannot be weighed against or prevail over the privilege against self-

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[180] *Accord, Kelley* v. *Metropolitan County Board of Education of Nashville and Davidson County, Tenn.* 463 F.2d 732 (6th Cir. 1972), *cert. denied* 409 U.S. 1001 (1972); *Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U.S. 1 (1971); *Cisneros* v. *Corpus Christi Independent School District,* 330 F. Supp. 1377 (1971).

[181] For examples of the reaffirmation of other Constitutional rights, which may involve demands upon the State Treasury, *see, e.g., Argersinger* v. *Hamlin,* 407 U.S. 25 (1972) (furnishing counsel for all indigents charged with misdemeanors); *Gideon* v. *Wainwright,* 372 U.S. 335 (1963) (furnishing counsel for all indigents charged with felonies); *Reynolds* v. *Sims,* 377 U.S. 533 (1964) (legislative reapportionment).

incrimination, or the right of people to be secure in their homes. If, as this court and the Circuit Court have held, the rights of children are being denied, the cost and inconvenience of restoring those rights is no reason under the Constitution for continuing to deny them." 318 F. Supp. at 801.

Given the extensive participation by the State Defendants in all facets of Michigan Public School Education, the State Defendants can be ordered to implement an effective plan for desegregation by the District Court.

VIII

A THREE JUDGE DISTRICT COURT IS NOT REQUIRED SINCE THE CONSTITUTIONALITY OF A STATEWIDE STATUTE IS NOT BEING CHALLENGED.

Amici Curiae Bloomfield Hills School District, *et al.*, contend that the District Court and the Sixth Circuit Court of Appeals erred by failing to order the convening of a three-judge district court under 28 U.S.C. § 2281.[182] This contention is based upon the theory that any order implementing a metropolitan plan for desegregation would ". . .necessarily involve restraining the enforcement, operation or execution of statutes of state-wide application."[183] What *Amici Curiae* fail to discern is that any court ordered desegregation plan in this cause would not enjoin a statute which has been attacked as unconstitutional. The injunction, referred to by *Amici Curiae*, would require state and local officials to refrain from exercising certain powers under state statutes. Such state statutes have not been challenged as unconstitutional

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[182] In his "State of the Federal Judiciary – 1972" report to the American Bar Association, Mr. Chief Justice Burger suggested that:

> "[w]e should totally eliminate the three-judge district courts that now disrupt district and circuit judges' work. . .
>
> * * *
>
> . . . [t]he original reasons for establishing these special courts, whatever their validity at the time, no longer exist."

Burger, *The State of the Federal Judiciary – 1972*, 58 A.B.A.J. 1049, 1053 (1972).

Other commentators have suggested that the three-judge courts' usefulness may now be very limited:

> "Recently, however, both reapportionment and desegregation suits have virtually disappeared from three-judge court dockets because of the interpretation of the three-judge court statute given by the Supreme Court in *Bailey* v. *Patterson*, holding that three judges are not required to hear cases when the challenged statute is clearly unconstitutional, as determined by previous decisions in similar cases. Now, more than a decade after *Brown* v. *Board of Education* and *Baker* v. *Carr*, desegregation and reapportionment cases can usually be handled by a single judge. Whether some new class of cases involving the same degree of public interest and reaction will develop is uncertain. It might be noted, however, that the center of current controversy over federal courts and state government involves busing – a form of relief that can be ordered by a single judge". [footnotes omitted]. Comment, *Why Three-Judge District Courts?*, 25 Ala. L. Rev. 371, 379-80 (1973).

[183] Brief for *Amici Curiae*, Bloomfield Hills School District, *et al.* page 20.

by either the Courts or the Plaintiffs below.[184]

Judicial Code, 28 U.S.C. § 2281 states in pertinent part:

> "An interlocutory or permanent injunction restraining the. . .execution of any *State statute* by restraining the action of any officer of such State in the. . .execution of *such statute*. . .shall not be granted by any district court or judge thereof *upon the ground of the unconstitutionality of such statute* unless the application therefor is heard and determined by a district court of three judges under Section 2284 of this title." [emphasis added].

Inasmuch as any action of state officials that may be enjoined in the instant case is not pursuant to a state statute that has been challenged as unconstitutional, this case does not fall within the purview of 28 U.S.C. § 2281. This is particularly true in light of this Honorable Court's strict construction of 28 U.S.C. § 2281. *See Phillips* v. *United States*, 312 U.S. 246, 250-51 (1941).

In *Phillips* v. *United States, supra*, a three judge court granted an interlocutory injunction restraining the Governor of Oklahoma from interferring with the completion of a federal dam which would cause flooding of state highways. The Governor had declared martial law and had ordered the State Adjutant General to take control of the dam site. The authorizations under which he presumed to act were the state constitution[185] and a statute authorizing and requiring him to call out the militia in case of war or other contingencies including "any forcible obstructing of the execution of the laws or reasonable apprehension thereof, and at

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[184] Act 48, Mich. Pub. Acts of 1970 was deemed unconstitutional. However, a three-judge court was not required. Act 48 was enacted by the Michigan Legislature for the sole purpose of thwarting the implementation of a desegregation plan in Michigan's *only* first class school district, the Detroit school system. Since the application of the statute was local in nature (Detroit school system only) a three judge court was not required. *Ex parte Collins*, 277 U.S. 565 (1928).

[185] Wherein the Governor was given "supreme executive power," acted as "Commander in Chief" of the State Militia and caused "the laws of the state to be faithfully executed." 312 U.S. at 251.

all other times he may deem necessary. . . ." *Phillips, supra* at 252.

The United States in its Complaint did not attack the validity of these provisions. However, it did contend that the suit was to restrain the enforcement or execution of a statute on the ground of its unconstitutionality and therefore properly was before three judges. Rejecting this claim, Mr. Justice Frankfurter said:

> "The claim proves too much. Probably most of the actions of governors trace back to the common provision charging them with taking care that the laws be faithfully executed. Some constitutional or statutory provision is the ultimate source and all actions by state officials. But attack on lawless exercise of authority in a particular case is not an attack upon the constitutionality of a statute conferring the authority even though a misreading of the statute is invoked as justification. At least not within the Congressional scheme of § 266. . . ." [Judicial Code of 1911, former 28 U.S.C. § 380 (1940), present 28 U.S.C. § 2281]. 312 U.S. at 252.

The remedy sought by the Plaintiffs below is an order by the District Court requiring the State Defendants to exercise their power to bring about the desegregation of the Detroit school system. The State Defendants have this power through statutes enacted by the Michigan Legislature. Hence, an order of the District Court would condition the state officials' enforcement of these statutes in a manner that would effectuate the desired remedy. It cannot seriously be argued that Plaintiffs in this case are seeking to invalidate the statutes through which appropriate state officials will grant relief.[186] for this reason, 28 U.S.C. § 2281 does not apply.

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[186] *Amici Curiae*, Bloomfield Hills School District, *et al.* have cited *Spencer v. Kugler*, 326 F. Supp. 1235 (D.N.J. 1971), *aff'd*, 404 U.S. 1027 (1972) for the proposition that a three judge court is required in the instant case. In *Spencer*, Plaintiffs sought to challenge the constitutionality of New Jersey's statutory scheme establishing the boundaries of school districts to coincide with the boundaries of the state's political subdivisions. In the instant case, Plaintiff's do not seek to challenge the constitutionality of any Michigan statutes other than Public Act 48. *(See* f.n. 105 *supra).*

CONCLUSION

For the reasons above stated it is respectfully submitted that this Honorable Court affirm the decision of the Court of Appeals for the Sixth Circuit.

Respectfully submitted,

GEORGE T. ROUMELL, JR.

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members of the Board of
Education For The School District
of the City of Detroit and
NORMAN DRACHLER, Superintendent
of the Detroit Public Schools.

Dated: February 2, 1974

EXHIBIT I

PERCENTAGE OF TOTAL REVENUE OF 54 METRO AREA DISTRICTS (BY SOURCE)

District	Local Revenue	State Aid
Allen Park	66	33
Berkley	59	39
Birmingham	82	18
Bloomfield Hills	83	17
Centerline	78	20
Cherry Hill	37	60
Clarenceville	64	35
Clawson	43	56
Crestwood	58	41
Dearborn	94	5
Dearborn Hts.	37	62
Detroit	47	40
East Detroit	47	50
Ecorse	86	9
Fairlane	(information not available)	
Farmington	65	33
Ferndale	57	39
Fitzgerald	85	14
Fraser	49	50
Garden City	36	63
Grosse Pointe	88	11
Hamtramck	85	6
Harper Woods	89	10
Hazel Park	46	50
Highland Park	64	23
Inkster	26	61
Lakeshore	35	63
Lakeview	45	52
Lamphere	75	24
Lincoln Park	55	43
Livonia	66	33
Madison Hts.	44	53

District	Local Revenue	State Aid
Melvindale	76	23
N. Dearborn Hts.	65	34
Oak Park	90	8
Redford Union	57	42
River Rouge	92	3
Riverview	97	2
Romulus	70	27
Roseville	45	53
Royal Oak	64	34
South Lake	66	32
South Redford	86	13
Southfield	85	15
Southgate	54	45
Taylor	54	44
Troy	80	18
Van Dyke	75	24
Warren	65	33
Warren Woods	40	58
Wayne	55	43
West Bloomfield	63	35
Westwood	62	35
Wyandotte	70	26

Source: *Ranking of Michigan Public High School-School District by Selected Financial Data*, 1971-72, Bulletin 1012, Michigan State Department of Education (1973).

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1973

No. 73-434

WILLIAM G. MILLIKEN, ET AL.,

Petitioners,

vs.

RONALD G. BRADLEY, ET AL.,

Respondents.

No. 73-435

ALLEN PARK PUBLIC SCHOOLS, ET AL.,

Petitioners,

vs.

RONALD G. BRADLEY, ET AL.,

Respondents.

No. 73-436

THE GROSSE POINTE PUBLIC SCHOOL SYSTEM,

Petitioner,

vs.

RONALD G. BRADLEY, ET AL.,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

APPENDIX TO BRIEF FOR RESPONDENTS BOARD OF EDUCATION FOR THE SCHOOL DISTRICT OF THE CITY OF DETROIT, ET AL.

GEORGE T. ROUMELL, JR.
RILEY AND ROUMELL
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FILED
FEB 4 1974
MICHAEL RODAK, JR., CLERK

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CONSTITUTIONAL PROVISIONS

NORTHWEST ORDINANCE 1787

Art. III. Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

MICHIGAN CONSTITUTION OF 1835

ARTICLE X—EDUCATION

Superintendent of public instruction, appointment, term.

1. The Governor shall nominate, and, by and with the advice and consent of the legislature in joint vote, shall appoint a Superintendent of Public Instruction, who shall hold his office for two years, and whose duties shall be prescribed by law.

Perpetual fund for support of schools.

2. The legislature shall encourage, by all suitable means, the promotion of Intellectual, Scientifical and Agricultural improvement.—The proceeds of all lands that have been, or hereafter may be, granted by the United States to this state, for the support of schools, which shall hereafter be sold or disposed of, shall be and remain a perpetual fund; the interest of which, together with the rents of all such unsold lands, shall be inviolably appropriated to the support of schools throughout the State.

Common school system, yearly term.

3. The legislature shall provide for a system of Common Schools, by which a school shall be kept up and supported in each school district, at least three months in every year; and any school district neglecting to keep up and support such a school may be deprived of its equal proportion of the interest of the public fund.

Libraries.

4. As soon as the circumstances of the state will permit, the legislature shall provide for the establishment of Libraries, one at least in each township; and the money which shall be paid by persons as an equivalent for exemption from military duty, and the clear proceeds of all fines assessed in the several counties for any breach of the penal laws, shall be exclusively applied for the support of said libraries.

University fund.

5. The legislature shall take measures for the protection, improvement or other disposition of such lands as have been, or may hereafter be, reserved or granted by the United States to this state for the support of a University; and the funds accruing from the rents or sale of such lands, or from any other source, for the purpose aforesaid, shall be and remain a permanent fund for the support of said University, with such branches as the public convenience may hereafter demand, for the promotion of literature, the arts and sciences, and as may be authorized by the terms of such grant: and it shall be the duty of the legislature, as soon as may be, to provide effectual means for the improvement and permanent security of the funds of said University.

MICHIGAN CONSTITUTION OF 1850

ARTICLE 13—EDUCATION

Supervision by superintendent of public instruction.

Sec. 1. The superintendent of public instruction shall have the general supervision of public instruction, and his duties shall be prescribed by law.

Primary schools; instructions in English language.

Sec. 4. The legislature shall, within five years from the adoption of this constitution, provide for and establish a system of primary schools, whereby a school shall be kept without charge for tuition, at least three months in each year, in every school district in the state, and all instruction in said school shall be conducted in the English language.

State board of education.

Sec. 9. There shall be elected at the general election in the year one thousand eight hundred and fifty-two three members of a state board of education; one for two years, one for four years, and one for six years; and at each succeeding biennial election there shall be elected one member of such board, who shall hold his office for six years. The superintendent of public instruction shall be ex officio a member and secretary of such board. The board shall have the general supervision of the state normal school, and their duties shall be prescribed by law.

MICHIGAN CONSTITUTION OF 1908

ARTICLE XI—EDUCATION

Superintendent of public instruction; election; term; duties; compensation

Sec. 2. A superintendent of public instruction shall be elected at the regular election to be held on the first Monday in April, nineteen hundred nine, and every second year thereafter. He shall hold office for a period of two years from the first day of July following his election and until his successor is elected and qualified. He shall have general supervision of public instruction in the state. He shall be a member and secretary of the state board of education. He shall be ex-officio a member of all other boards having control of public instruction in any state institution, with the right to speak but not to vote. His duties and compensation shall be prescribed by law.

State board of education; election; powers and duties

Sec. 6. The state board of education shall consist of 4 members. On the first Monday in April, 1909, and at each succeeding biennial spring election, there shall be elected 1 member of such board who shall hold his office for 6 years from the first day of July following his election. The state board of education shall have general supervision of the state normal college and the state normal schools, and the duties of said board shall be prescribed by law.

Primary school system

Sec. 9. The legislature shall continue a system of primary schools, whereby every school district in the state shall provide for the education of its pupils without charge for tuition; and all instruction in such schools shall be conducted in the English language. If any school district shall neglect to maintain a school within its borders as prescribed by law for at least 5 months in each year, or to provide for the education of its pupils in another district or districts for an equal period, it shall be deprived for the ensuing year of its proportion of the primary school interest fund. If any school district shall, on the second Monday in July of any year, have on hand a sufficient amount of money in the primary school interest fund to pay its teachers for the next ensuing 2 years as determined from the pay roll of said district for the last school year, and in case of a primary district, all tuition for the next ensuing 2 years, based upon the then enrollment in the seventh and eighth grades in said school district, the children in said district shall not be counted in making the next apportionment of primary school money by the superintendent of public instruction; nor shall such children be counted in making such apportionment until the amount of money in the primary school interest fund in said district shall be insufficient to pay teachers' wages or tuition as herein set forth for the next ensuing 2 years.

MICHIGAN CONSTITUTION OF 1963

ARTICLE 8—EDUCATION

§ 2. Free elementary and secondary schools; discrimination; nonpublic schools, state aid

Sec. 2. The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin.

No public monies or property shall be appropriated or paid or any public credit utilized, by the legislature or any other political subdivision or agency of the state directly or indirectly to aid or maintain any private, denominational or other nonpublic, pre-elementary, elementary, or secondary school. No payment, credit, tax benefit, exemption or deductions, tuition voucher, subsidy, grant or loan of public monies or property shall be provided, directly or indirectly, to support the attendance of any student or the employment of any person at any such nonpublic school or at any location or institution where instruction is offered in whole or in part to such nonpublic school students. The legislature may provide for the transportation of students to and from any school.

§ 3. State board of education; duties

Sec. 3. Leadership and general supervision over all public education, including adult education and instructional programs in state institutions, except as to institutions of higher education granting baccalaureate degrees, is vested in a state board of education. It shall serve as the general planning and coordinating body for all public education, including higher education, and shall advise the legislature as to the financial requirements in connection therewith.

Superintendent of public instruction; appointment, powers, duties

The state board of education shall appoint a superintendent of public instruction whose term of office shall be determined by the board. He shall be the chairman of the board without the right to vote, and shall be responsible for the execution of its policies. He shall be the principal executive officer of a state department of education which shall have powers and duties provided by law.

State board of education; members, nomination, election, term

The state board of education shall consist of eight members who shall be nominated by party conventions and elected at large for terms of eight years as prescribed by law. The governor shall fill any vacancy by appointment for the unexpired term. The governor shall be ex-officio a member of the state board of education without the right to vote.

Boards of institutions of higher education, limitation

The power of the boards of institutions of higher education provided in this constitution to supervise their respective institutions and control and direct the expenditure of the institutions' funds shall not be limited by this section.

UNITED STATES STATUTES

Judicial Code, 28 U.S.C. §2281 provides:

§2281. Injunction against enforcement of State statute; three-judge court required

An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Fed. R. Civ. P. 19 provides:

Rule 19. Joinder of Persons Needed for Just Adjudication

(a) Persons to be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

(b) Determination by Court Whenever Joinder not Feasible. If a person as described in subdivision (a) (1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will

(c) Pleading Reasons for Nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a) (1)-(2) hereof who are not joined, and the reasons why they are not joined.

(d) Exception of Class Actions. This rule is subject to the provisions of Rule 23.

Fed. R. Civ. P. 24 provides:

Rule 24. Intervention

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) PERMISSIVE INTERVENTION. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) PROCEDURE. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute of the United States gives a right to intervene. When the constitutionality of an act of Congress affecting the public interest is drawn in question in any action to which the United States or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney General of the United States as provided in Title 28, U.S.C., § 2403.

MICHIGAN PUBLIC ACTS

ACT 315, MICH. PUB. ACTS OF 1901

AN ACT to incorporate the public schools of the village of Jerome, Hillsdale county, Michigan; define the boundaries thereof, provide for the election of trustees and fix their powers and duties, and provide for the distribution of the territory of the disorganized districts.

The People of the State of Michigan enact:

SECTION 1. That so much of the township of Somerset in the county of Hillsdale and the township of Moscow in the county of Hillsdale as are included in the following descriptions and boundaries, viz: All those lands situate in town five south of range one west, known and described as sections seventeen, eighteen, nineteen, twenty and thirty, and the west half of section eight, and section seven excepting the west half of the northwest quarter thereof, and the north half of section thirty-one excepting the south half of the east half of the northeast quarter thereof, and the north half of section thirty-two, excepting the south half of the west half of the northwest quarter thereof, and the west half and the south half of the southeast quarter and the northwest quarter of the northwest quarter all on section twenty-nine, and the northwest quarter of section twenty-one, and the west half of the west half and the southeast quarter of the southwest quarter of section sixteen, and all those lands situate in town five south of range two west, described as the east half of the southeast quarter of section thirteen, and all of section twenty-four excepting the west half of the west half thereof, and all of section twenty-five excepting the west half of the west half thereof, and the northeast quarter of the northeast quarter of section thirty-six, shall constitute a single school district to be known and designated as the public schools of the village of Jerome, and such school district shall have all the powers and privileges conferred upon school districts, and union and graded school districts, by general law, and hereafter all schools established therein, in pursuance of this act, under the direction and regulation of the school board shall be public and free to all children actual residents within the limits thereof.

SEC. 2. The officers of said district shall consist of trustees T. J. Lowrey, H. S. Walworth, C. H. Manzer, C. M. Bross, W. L. Bibbins, of the school district heretofore known as fractional school district number two of the townships of Somerset and Moscow, and Jay Chandler of the school district heretofore known as district number seven of the town-

ship of Somerset, whose powers and duties shall be severally the same as those conferred upon and required of the moderator, director and assessor of school districts in this State except so far as the same are varied or modified by the provisions of this act, or other acts relating to said district, who shall be and are hereby constituted the trustees and officers of the public schools of the village of Jerome; whose term of office shall continue until their successors shall be elected and qualified as hereinafter provided. Said board shall within twenty days after this act shall take effect meet and by lot divide into three equal divisions the terms of office of which shall expire as follows: The first division, at the time of the first annual school meeting held under the provisions of this act; the second division, at the time of the second annual meeting; and the third division at the time of the third annual meeting; and at the same meeting of the board they shall elect from their own number a president, secretary and treasurer, whose terms of office shall continue until the next annual meeting of said district. Said board of trustees shall have power to fill all vacancies that may occur in their number, or in the officers appointed by them, until the next annual meeting of said district.

SEC. 3. At the annual meeting on the first Monday of July in each year there shall be elected by ballot two trustees whose term of office shall be three years, or until their successors are elected and qualified; and within ten days after each annual meeting the trustees shall meet and elect from their own number a president, secretary and treasurer for the ensuing year.

SEC. 4. From and after the passage of this act said board of trustees shall have all the powers and privileges conferred upon union and graded school districts by general law, and all the powers and duties of school inspectors of townships in this State shall be vested in and required of said board of trustees, who shall be ex officio the board of school inspectors of the public schools of the village of Jerome and shall make their annual reports to the superintendent of public instruction as other boards of school inspectors are required to do under the general school laws.

SEC. 5. Said board of trustees shall hire and contract with such duly qualified teachers as may be required in the schools, and shall provide all necessary appendages for the school house, to keep the same in good condition and repair, and shall keep an accurate account of all expenses incurred by them and all claims for such expenses shall be audited by said board of trustees and paid by the treasurer out of any money provided by the district for that purpose, on the order of the secretary, countersigned by the president of the board. Said board shall present at each annual meeting of the district a statement of all receipts, expenditures and accounts audited and allowed by them, together with the amount of the ex-

penses necessary to be incurred during the ensuing year for such purposes and to pay the debts of the district and for the services of any teacher or any district officer, and such money when voted by any annual meeting shall be assessed and collected in the same manner as other district taxes but no tax for these purposes shall be voted at a special meeting, unless a notice of the same shall be expressed in the notice of such meeting.

SEC. 6. The treasurer of said district within ten days after his election and before he enters upon the duties of his office, shall give a bond to said district in such sum and with such sureties as shall be approved by the district board conditioned for the faithful discharge of the duties of said office and to account for and pay over all moneys that shall come into his hands by virtue of said office and he shall have power by suit at law, under the direction of the district board and in the name of the public schools of the village of Jerome, to collect all moneys due said district, or said public schools, from the several township treasurers, or for the tuition of children who are not actual residents of said district, or that may be due said district from any other source whatever. The bond of said treasurer shall be filed with the secretary of the board of trustees.

SEC. 7. All the lands, school houses and sites, together with the furniture, libraries, property, effects and estates and all property real or personal of the districts formerly known as district number three, district number seven of the township of Somerset and fractional district number eight of the townships of Somerset and Moscow are hereby transferred to and declared the property of the public schools of the village of Jerome and it is expressly provided that all amounts due the said districts formerly known as district number three and district number seven of the township of Somerset and fractional district number eight of the townships of Somerset and Moscow from whatever source shall become due and payable to the public schools of the village of Jerome; and it is further provided that all debts and obligations against the school district formerly known as district number three and district number seven of the township of Somerset and fractional district number eight of the townships of Somerset and Moscow contracted before the passage of this act shall become the debts and obligations of the public schools of the village of Jerome and shall be paid by the board of trustees of the public schools of the village of Jerome upon proper proof of the validity of such debt or obligation.

SEC. 8. Suits may be brought by or against the public schools of the village of Jerome on all contracts, obligations, debts, bonds or demands due or unpaid from or to said fractional school district number two of the townships of Somerset and Moscow in like manner as they might have been by or against said school district if this act had not been passed.

SEC. 9. The site located heretofore and now held by said fractional school district number two aforesaid shall be and the same is hereby declared and deemed to be a school house site for the public schools of the village of Jerome and the school building now owned and occupied by said fractional school district number two aforesaid is hereby made and declared to be the central school building of the public schools of the village of Jerome, to be used for the academic and more advanced classes of scholars and such other classes of scholars as the board of trustees shall deem necessary.

SEC. 10. The board of trustees of the public schools of the village of Jerome, as constituted in section two of this act, shall have power to sell at private or public sale the school buildings and sites owned by districts formerly known as district number three and district number seven of the township of Somerset and fractional district number eight of the townships of Somerset and Moscow, and the moneys received from such sale of said buildings and real estate may be used by said board of the public schools of the village of Jerome to make such repairs, improvements and additions to the central school building as they may deem necessary.

SEC. 11. Within thirty days after this act shall take effect the board of school inspectors of said township of Somerset shall meet and attach to other districts in whole or in part within the boundaries of said township, such parts of said districts formerly known as district number three and district number seven of the township of Somerset and fractional district number eight of the townships of Somerset and Moscow as are not by this act included within the boundaries of said public schools of the village of Jerome: Provided, That the said board of trustees of the public schools of the village of Jerome shall fulfil all contracts now existing in any of the districts affected by the provisions of this act.

This act is ordered to take immediate effect.

Approved March 1, 1901.

ACT 239, MICH. PUB. ACTS OF 1967

AN ACT to provide recognition of a state of emergency in certain school districts in the state; to provide for continuance of the state committee on reorganization of school districts; and to provide certain powers and duties of the state board of education in connection therewith.

The People of the State of Michigan enact:

388.711 Reorganization of school districts; determination of emergency [M.S.A. 15.2299(51)]

Sec. 1. The state committee for the reorganization of school districts, created by Act No. 289 of the Public Acts of 1964, being sections 388.681 to 388.693 of the Compiled Laws of 1948 shall determine the existence of an emergency warranting immediate reorganization within any primary school district or school district of the fourth class not reorganized under the provisions of Act No. 289 of the Public Acts of 1964.

388.712 Applicability of act to counties over 1,000,000; petitions to determine emergency. [M.S.A. 15.2299(52)]

Sec. 2. This act applies only to school districts lying wholly in, or the major part of the territory of which lies wholly in, a county having a population of more than 1,000,000. The board of education or 5% of the school electors, but not less than 5 electors in a primary school district or less than 25 electors in a school district of the fourth class, of any primary school district or school district of the fourth class not reorganized under the provisions of Act No. 289 of the Public Acts of 1964, may petition the state committee to determine if an emergency warranting immediate reorganization exists within the district.

388.713 Study to determine emergency; hearing. [M.S.A. 15.2299(53)]

Sec. 3. Upon receipt of the petition, the state committee shall conduct, or cause to be conducted, an impartial study to determine if an emergency exists. Within 20 days following publication of the results of the study, a member of the state committee, or the secretary designated by the committee, shall hold a hearing in the district. Notice of the time and place of the hearing shall be given the voters of the district and the superintendent of the intermediate school district to which the district is constituent.

388.714 Findings; matters included. [M.S.A. 15.2299(54)]

Sec. 4. Within 20 days following receipt of a transcript of the hearing, the state committee shall make a finding relative to the existence of a condition or conditions warranting immediate reorganization of the district. The finding shall include consideration of the adequacy of the district to provide the following:

(a) An educational program meeting standards established by the state department of education or by accrediting agencies.

(b) A physical plant which can contain an acceptable school program.

(c) Transportation for students.

(d) Necessary tax base.

(e) Pupil services, administrative and teaching staff, and auxiliary services in compliance with rules prescribed by the department of education.

388.715 Report and recommendations. [M.S.A. 15.2299(55)]

Sec. 5. Upon a finding by the state committee that conditions in a school district warrant immediate reorganization, the state committee shall transmit its report with recommendations to the state board of education.

388.716 Publication of report and recommendations; objections; determination. [M.S.A. 15.2299(56)]

Sec. 6. The state board of education shall publish the report and recommendations of the state committee and shall invite objections or comments to be filed with it within 20 days following publication of the report. The state board then shall consider the report of the state committee, together with the comments and objections filed, and make a determination as to endorsement of the finding of the state committee.

388.717 Attachment by annexation; effective date; conclusiveness. [M.S.A. 15.2299(57)]

Sec. 7. The state board of education, upon endorsement of the finding of the state committee that an emergency warrants immediate reorganization of a school district, shall attach a portion of the district not to exceed 30% by area by annexation or division to each contiguous district as will provide the most equitable educational opportunity for all of the students of the reorganized district and shall determine the effective date of attachment. Action of the state board of education shall be final.

388.718 Reorganized district; adjustment of bonded indebtedness; levy of taxes. [M.S.A. 15.2299(58)]

Sec. 8. If a district attached under the provisions of this act at the time of reorganization, has a bonded indebtedness incurred after December 8, 1932, its identity shall not be lost and its territory shall remain as an assessing unit for purposes of such bonded indebtedness until the indebtedness has been retired or the outstanding bonds refunded by the reorganized district. The board of the reorganized district, or the board of the district which has succeeded to the largest share of the state equalized valuation of the attached district, shall constitute the board of trustees for the original district having bonded indebtedness and the officers of the reorganized or successor district shall be the officers for the original district. The board of the reorganized or successor district shall certify and order the levy of taxes for the bonded indebtedness in the name of the original district, shall not commingle the debt retirement funds of the original district with funds of the reorganized or successor district and shall do all things relative to such bonded indebtedness required by law and by the terms under which the issue and sale of the bonds were originally authorized. All other tax levies for purposes of the reorganized district shall be spread over the entire area of the reorganized district.

388.719 Reorganized districts' assumption of bonded indebtedness of an original school district; effect; certification and levy of taxes; election. [M.S.A. 15.2299(59)]

Sec. 9. Any time after 3 years following reorganization. the reorganized district, or that district which has succeeded to the largest share of the attached district's state equalized valuation, may assume the obligation of the bonded indebtedness incurred after December 8, 1932, of the original district which has become a part of the reorganization and pay the same from the proceeds of a debt retirement tax levy spread uniformly over the territory of the reorganized or successor district whenever the electors of the reorganized or successor district shall have approved an increase in the limitation on taxes for that purpose and the school tax electors of the district have approved the assumption of such bonded indebtedness. Assumption of the bonded indebtedness of an original school district shall not release the territory of the original district from the final responsibility of paying the obligation or rescind the increase in the limitation on taxes pledged to the bond issue or available to it in the original district, nor be construed as so doing. When the bonded indebtedness of an original district has been so assumed, the board of the reorganized or successor district shall certify and order the levy of taxes for the bonded indebtedness equivalent in terms of money to those required by the terms under which the indebtedness was originally incurred and carry out all provisions of the original bond contract. The election to assume the bonded indebtedness of an attached district may be held at any time after 3 years following the effective date of reorganization when a proposal is placed before the school tax electors to increase the bonded indebtedness of the combined district.

388.720 Petitions; intermediate district superintendent to furnish; form; circulation signatures. [M.S.A. 15.2299(60)]

Sec. 10. The intermediate district superintendent upon request shall furnish any school district with petitions. The petitions shall be printed or duplicated and the first page shall be in the following form:

Petition no. ..... consisting of ..... pages.

(Signed) .....

Superintendent of intermediate district of .....

To the state committee on reorganization of school districts, Lansing, Michigan.

We, the undersigned, qualified (here insert "registered" in the case of a registration district) electors of .....

(name of school district)

declare that in the following school district there does exist an emergency calling for immediate reorganization, and we do call upon the state board of education to reorganize the district:

Name of school district to be reorganized to be listed here .....

Signatures of petitioners

Name	Address	Date of signing

Each additional page of any such petition shall have at or near the top of the page the following:

Official petition

No. ..... Page no. .....

Signature of intermediate district superintendent .....

Each page shall have printed or duplicated the following statement below the space for signature for petitioners:

The undersigned certifies that he is a qualified (here insert "registered" in the case of a registration district) elector of .....

(name of school district)

and that each signature appearing on this page is the genuine signature of the person signing the same and that to his best knowledge and belief each such person was at the time of signing a qualified (here insert "registered" in the case of a registration district) elector of the school district.

Dated this ..... day of ..... 19....

Each petition shall be signed by the intermediate district superintendent as indicated in the foregoing form before being issued to any person for circulation.

Only qualified school electors of the districts in which signatures to the petitions are being sought shall circulate such petitions and the statement appearing below the signatures of petitioners shall be dated or signed on each page before returning to the state committee.

388.721 Effective date. [M.S.A. 15.2299(61)]

Sec. 11. This act shall not be effective after July 1, 1968.

This act is ordered to take immediate effect.

Approved July 12, 1967.

ACT 32, MICH. PUB. ACTS OF 1968

AN ACT to provide for emergency financial assistance for insolvent school districts; to prescribe certain powers and duties of the intermediate board of education in connection therewith; to provide a procedure for reorganization of such school districts; to provide for continuance of the state committee on reorganization of school districts; to provide certain powers and duties of the state board of education in connection therewith; to create an emergency loan revolving fund; and to make an appropriation.

The People of the State of Michigan enact:

388.201 Insolvent school districts, emergency loans; definitions. [M.S.A. 15.1916(101)]

Sec. 1. As used in this act:

(a) "School district" does not include an intermediate school district.

(b) "State board" means the state board of education.

388.202 Applicability of act. [M.S.A. 15.1916(102)]

Sec. 2. The procedures provided by this act may be used notwithstanding any other provision of law to the contrary.

388.203 Eligibility for loan. [M.S.A. 15.1916(103)]

Sec. 3. The board of education of a school district that incurs a deficit and is unable to meet its financial obligations is eligible to apply for an emergency loan from the state. Such a district shall be considered an insolvent district.

388.204 Certification of insolvency; audit. [M.S.A. 15.1916(104)]

Sec. 4. A school district to be eligible for an emergency loan shall certify, based upon a certified audit by the state treasury department, that the school district is insolvent.

388.205 Application for loan; amount; review. [M.S.A. 15.1916(105)]

Sec. 5. The board of education of a school district meeting the criteria set forth in section 4 may apply to the state board of education for an emergency loan to meet its financial needs until the end of the fiscal year in which application is made. If, after review, the state board of education finds that the district meets the criteria set forth in section 4, a recommendation for an emergency loan shall be submitted to the governor for review and recommendation to the legislature.

388.206 Bonds, issuance, amount, terms; repayment of loan; budget; report. [M.S.A. 15.1916(106)]

Sec. 6. The board of education of a school district eligible to receive an emergency loan under the provisions of this act shall issue bonds in the amount of the emergency loan, made payable to the state of Michigan, in equal installments, in not more than 10 years, plus interest at the statutory rate beginning with the first fiscal year after receipt of the loan. Such bonds shall be payable out of any funds of the school district including state appropriations available to the school district under any act. The amount due on such bonds with interest in any fiscal year shall be deducted in equal portions from the last 3 payments of state school aid due such school district in each fiscal year. Such bonds shall also be the full faith and credit obligations of the school district and all taxable property within said school district shall be subject to the levy of ad valorem taxes to repay the principal and interest obtained under such bonds without limitation as to rate or amount. Such board of education shall submit its budget for review and approval to the board of education a

the intermediate district in which the greater portion of the district is geographically located. This budget shall be a balanced budget and shall include a minimum repayment of 10% of the original face amount of the loan received under this act, plus interest at the statutory rate. The district shall submit a monthly expenditure report to the board of education of the intermediate school district.

388.206a Operating millage, minimum; reorganization. [M.S.A. 15.1916(106a)]

Sec. 6a. However, any school district not levying a minimum of 20 mills for operating purposes in the fiscal year for which it receives an emergency loan shall be reorganized immediately by the state board of education following recommendation by the state committee on reorganization of school districts.

388.207 Expenditures within revenues; balanced budget. [M.S.A. 15.1916(107)]

Sec. 7. The board of education of the intermediate school district shall take any steps necessary to assure that the expenditures of a school district which receives an emergency loan under the provisions of this act shall not exceed revenues on an annual basis and that the school district maintains a balanced budget.

388.209 Reorganization if unable to balance budget. [M.S.A. 15.1916(109)]

Sec. 9. If, upon application for an emergency loan, a board of education certifies that the school district will not be able to balance its budget, the district shall be reorganized by the state board of education following recommendation by the state committee on reorganization of school districts.

388.210 Balanced budget; reorganization. [M.S.A. 15.1916(110)]

Sec. 10. A school district receiving an emergency loan under the provisions of this act shall balance its budget in the fiscal year immediately following the fiscal year for which it receives an emergency loan or, following recommendation by the state committee on reorganization of school districts, shall be reorganized by the state board of education.

388.211 Default in loan repayment. [M.S.A. 15.1916(111)]

Sec. 11. A school district receiving an emergency loan under the provisions of this act, which defaults in repayment of the loan, shall be reorganized by the state board of education following recommendation by the state committee on reorganization of school districts.

388.212 Reorganization; hearing; notice; recommendations. [M.S.A. 15.1916(112)]

Sec. 12. Prior to reorganization of a school district under this act, the state committee on reorganization of school districts shall hold a hearing in the district to be reorganized. Notice of the time and place of the hearing shall be given the voters of all school districts involved in the proposed reorganization. The boards of education of the intermediate districts involved in the proposed reorganization shall make recommendations to the state committee regarding the proposed reorganization.

388.213 Determination if reorganization warranted; report. [M.S.A. 15.1916(113)]

Sec. 13. Within 20 days after receipt of a transcript of the hearing and recommendations of the boards of education of the intermediate districts, the state committee on reorganization of school districts shall determine if conditions exist warranting immediate reorganization of the district under this act. Upon a determination by the state committee that conditions in a school district warrant immediate reorganization, the state committee shall transmit its report with recommendations to the state board of education.

388.214 Report and recommendations; comments; determination. [M.S.A. 15.1916(114)]

Sec. 14. The state board of education shall publish the report and recommendations of the state committee on reorganization of school districts and shall invite objections or comments to be filed with it within 20 days following publication of the report. The state board then shall consider the report of the state committee, together with the comments and objections filed, and make a determination as to indorsement of the finding of the state committee.

388.215 Reorganization by state board; finality. [M.S.A. 15.1916(115)]

Sec. 15. The state broad of education, upon indorsement of the finding of the state committee on reorganization of school districts that immediate reorganization of a school district is warranted, shall reorganize the district with 1 or more districts contiguous to it in such a manner as will provide the most equitable educational opportunity for all of the students of the reorganized district, and shall determine the effective date of reorganization. Action by the state board of education shall be final.

388.216 Bonded indebtedness of attached district; trustees; determination of responsibility. [M.S.A. 15.1916(116)]

Sec. 16. If a school district attached under the provisions of this act at the time of reorganization has a bonded indebtedness incurred after December 8, 1932, its identity shall not be lost and its territory shall remain as an assessing unit for purposes of such bonded indebtedness until the indebtedness has been retired or the outstanding bonds refunded by the reorganized district. The board of the reorganized district, or the boards of districts receiving school buildings with an existing bonded debt shall constitute the board of trustees for the original district having a bonded indebtedness and the officers of the reorganized or successor district shall be the officers for the original district. If any original bonds of the reorganized district have been refinanced in any way, the state board of education shall make the final determination as to placement of the responsibility with the 1 or more boards of education receiving the buildings as to their responsibility in acting as the board of trustees for the original district. The board of each district assigned the responsibility as the board of trustees for any bonded indebtedness of the divided district shall certify and order the levy of taxes for the bonded indebtedness in the name of the original district.

388.217 Assumption of bonded indebtedness. [M.S.A. 15.1916(117)]

Sec. 17. Any time after 3 years following the reorganization of a school district under this act, a district receiving a building having an existing bonded indebtedness and assuming the responsibilities set forth in section 16, may assume the obligation of the bonded indebtedness incurred after December 8, 1932, of the school building attached to its district under the provisions of this act, and pay the same from the proceeds of a debt retirement tax levy spread uniformly over the territory of the reorganized or successor district when the electors of the reorganized or successor district approve an increase in the limitation on taxes for that purpose and the school tax electors of the district have approved the assumption of such bonded indebtedness. Assumption of the bonded indebtedness of an original school district does not release the territory of the original district from the final responsibility of paying the obligation or rescind the increase in the limitation on taxes pledged to the bond issue or available to it in the original district, nor be construed as so doing. When the bonded indebtedness of an original district has been so assumed, the board of the reorganized or successor district shall certify and order the levy of taxes for the bonded indebtedness equivalent in terms of money to those required by the terms under which the indebtedness was originally incurred and carry out all provisions of the original

[No. 244.]

AN ACT to require first class school districts to be divided into regional districts and to provide for local district school boards and to define their powers and duties and the powers and duties of the first class district board.

The People of the State of Michigan enact:

388.171 First class school district; division. [M.S.A. 15.2298(1)]

Sec. 1. Not later than January 30, 1970, the school board of each first class district shall divide its district into not less than 7 nor more than 11 regional school districts with not more than 50,000 nor less than 25,000 students in each district.

388.172 Same; board; regional members; present members, term. [M.S.A. 15.2298(2)]

Sec. 2. In addition to the present members of the first class board there shall be elected by the registered and qualified electors of each district to the first class board 1 member from each of the districts for a term of 4 years. The members of the first class school district board provided in section 2 to be elected by regions shall be elected in the general election to be held in November, 1970 and every fourth year thereafter for a term commencing on January 1 next following their election. The candidates shall be nominated in primary elections in the manner provided by law for the present first class school district members.

The term of office of the present first class school board members shall hereafter be 4 years. The terms of office of present first class school board members which expire June 30, 1971 are extended to January 1, 1973. The term of office of present first class school board members which expire June 30, 1973 are shortened to January 1, 1973. The 5 at large positions on the first class district school board which expire January 1, 1973 shall be filled at the general election to be held in November, 1972 for a term of 4 years. The terms of office of present first class school district board members which expire on June 30, 1975 are extended to January 1, 1977 and shall be filled at the general election to be held in November, 1976 for a term of 4 years.

388.173 Regional boards; size; qualifications; election; term. [M.S.A. 15.2298(3)]

Sec. 3. In each regional district there shall be elected 9 members to the regional board. No person shall be elected who is not a resident of the regional district from which he is elected. The members shall be nominated and elected by the registered and qualified electors of each district as is provided by law for the nomination and election of first class school board members except that signatures required on nominating petitions shall be not less than 500 nor more than 1,000. The members shall be elected for terms of 4 years. Except that of the members elected at the general election in 1970 the 5 members receiving the highest number of votes shall be elected for a term of 4 years and the 4 members receiving the next highest number of votes shall be elected for a term of 2 years.

388.174 First class district board, powers. [M.S.A. 15.2298(4)]

Sec. 4. The first class school district board shall retain all the powers and duties now possessed by a first class school district except for those given to a regional school district board under the provisions of this act.

388.175 Regional board, powers. [M.S.A. 15.2298(5)]

Sec. 5. Effective upon the commencement of its term of office, the regional school district board, subject to guidelines established by the first class district board, shall have the power to:

(1) Employ and discharge a superintendent for the regional school district from a list or lists of candidates submitted by the district board.

(2) Employ and discharge, assign and promote all teachers and other employees of the regional school district, subject to review by the first class school district board, which may overrule, modify or affirm the action of the regional district board.

(3) Determine the curriculum, use of educational facilities and establishment of educational and testing programs in the regional school district.

(4) Determine the budget for the regional school district based upon the allocation of funds received from the first class school district board.

388.176 Employee rights. [M.S.A. 15.2298(6)]

Sec. 6. The rights of retirement, tenure, seniority and of any other benefits of any employee transferred to a regional school district or between regional school districts from the first class district shall not be abrogated, diminished or impaired.

388.177 First class district board, functions. [M.S.A. 15.2298(7)]

Sec. 7. The first class school district board shall perform the following functions for the regional school districts:

(1) Central purchasing.

(2) Payroll.

(3) Contract negotiations for all employees, subject to the provisions of Act No. 336 of the Public Acts of 1947, as amended, being sections 423.201 to 423.216 of the Compiled Laws of 1948, and subject to any bargaining certification and to the provisions of any collective bargaining agreement pertaining to affected employees.

(4) Property management and maintenance.

(5) Bonding.

(6) Special education programs.

(7) Allocation of funds for capital outlay and operations to each regional school district.

(8) On or before November 1, 1970, establish guidelines for the implementation of the provisions of section 5.

Approved August 11, 1969.

bond contract. The election to assume the bonded indebtedness of an attached district may be held at any time after 3 years following the effective date of reorganization when a proposal is placed before the school tax electors to increase the bonded indebtedness of the combined district.

388.218 State committee on reorganization; continuation. [M.S.A. 15.1916(118)]

Sec. 18. The state committee on reorganization of school districts shall continue in existence for purposes of this act, notwithstanding any expiration date otherwise provided by law.

388.219 School emergency loan revolving fund; approval of loan; payment; appropriation. [M.S.A. 15.1916(119)]

Sec. 19. The school emergency loan revolving fund is created in the state treasury from which emergency loans shall be made to school districts as provided in this act. The fund shall consist of sums appropriated by the legislature plus repayments and interest on loans. The treasurer shall transfer any amount in the fund in excess of $1,500,000.00 to the general fund. Upon approval of an application for an emergency loan by concurrent resolution of the legislature or, when the legislature is not in session by majority vote of the members of the special commission on appropriations created by Act No. 120 of the Public Acts of 1937, as amended, being sections 5.1 to 5.5 of the Compiled Laws of 1948, the state treasurer shall issue his warrant on the fund for the amount of the loan. There is hereby appropriated from the general fund to the school emergency loan revolving fund the sum of $1,500,000.00.

388.220 Expiration of act. [M.S.A. 15.1916(120)]

Sec. 20. This act shall expire June 30, 1970.

This act is ordered to take immediate effect.
Approved May 17, 1968.

ACT 245, MICH. PUB. ACTS OF 1969

AN ACT to amend Act No. 269 of the Public Acts of 1955, entitled "An act to provide a system of public instruction and primary schools; to provide for the classification, organization, regulation and maintenance of schools and school districts; to prescribe their rights, powers, duties and privileges; to provide for registration of school districts, and to prescribe powers and duties with respect thereto; to provide for and prescribe the powers and duties of certain boards and officials; to prescribe penalties; and to repeal certain acts and parts of acts," as amended, being sections 340.1 to 340.984 of the Compiled Laws of 1948, by adding sections 330v, 330w and 330x.

The People of the State of Michigan enact:

Sections added.

Section 1. Act No. 269 of the Public Acts of 1955, as amended, being sections 340.1

to 340.984 of the Compiled Laws of 1948, is amended by adding sections 330v, 330w and 330x to read as follows:

340.330v Intermediate school district; disorganization, procedure. [M.S.A. 15.330(22)]

Sec. 330v. An intermediate school district comprised of less than 5 constituent districts and having no bonded indebtedness may be disorganized and its constituent school districts attached to contiguous intermediate school districts as provided in this and the following sections. The board of education of each constituent school district in an intermediate district may request the board of education of the intermediate school district to prescribe a plan for disorganization of the intermediate district. Each request shall prescribe another intermediate school district to which the constituent school district desires to be attached. When so requested by the boards of education of all the constituent school districts, the board of education of the intermediate school district shall prescribe by resolution a plan whereby each of the constituent school districts will be attached in whole to contiguous intermediate school districts prescribed in the requests but if the desired intermediate school district would not be contiguous under the plan then the plan may prescribe attachment to any contiguous district. The superintendent of the intermediate school district which is to be disorganized shall give at least 30 days' notice of the time and place of the meeting of the board of education and of the proposed plan for disorganization to be considered at the meeting by publication of such notice in a newspaper of general circulation in the intermediate school district. The board shall present the adopted plan for dissolution to the board of each of its constituent school districts and the board of each intermediate school district whose boundaries would be enlarged by such proposal.

340.330w Receiving district; notice; approval of plan; effective date. [M.S.A. 15.330(23)]

Sec. 330w. The superintendent of each intermediate school district whose boundaries would be enlarged by the dissolution shall give at least 30 days' notice of the time and place of the meeting of the board of education of the intermediate school district and of the recommended plan for enlargement of such district which is to be considered at the meeting by publication of such notice in a newspaper of general circulation in the intermediate school district. When the boards of each affected intermediate school district have approved the plan for disorganization, the board of the intermediate school district to be dissolved shall refer the matter to the state board of education for approval. The action of the state board of education declaring such district dissolved shall be final. The disorganization of the intermediate school district and the attachment of its constituent school districts to contiguous intermediate school districts shall become effective on July 1 next succeeding the date of the approval of the state board of education.

340.330x Distribution of property; taxes. [M.S.A. 15.330(24)]

Sec. 330x. The boards of education of the intermediate school districts to which territory is attached by such dissolution shall meet jointly, sitting as a single board, and make an equitable distribution of the money, property and other assets belonging to the disorganized district among the intermediate school districts affected. The territory of constituent school districts transferred to other intermediate school districts by the disorganization of an intermediate school district shall be subject to all taxes levied for purposes of the intermediate school district to which transferred, including taxes for the

retirement of bonded indebtedness, special education programs and vocational education programs.

This act is ordered to take immediate effect.
Approved August 11, 1969.

Act 48, Sec. 12, Mich. Pub. Act of 1970, provides:

388.182 Attendance provisions, implementation; conditions. [M.S.A. 15.2298(12)]

Sec. 12. The implementation of any attendance provisions for the 1970-71 school year determined by any first class school district board shall be delayed pending the date of commencement of functions by the first class school district boards established under the provisions of this amendatory act but such provision shall not impar the right of any such board to determine and implement prior to such date such changes in attendance provisions as are mandated by practical necessity. In reviewing, confirming, establishing or modifying attendance provisions the first class school district boards established under the provisions of this amendatory act shall have a policy of open enrollment and shall enable students to attend a school of preference but providing priority acceptance, insofar as practicable, in cases of insufficient school capacity, to those students residing nearest the school and those studnets desiring to attend the school for participation in vocationally oriented courses or other specialized curriculum.

ACT 134, MICH. PUB. ACTS OF 1971

AN ACT to amend sections 1, 2, 3, 4, 5, 8a, 10, 11, 12, 13, 16a, 17, 18a, 22 and 24 of Act No. 312 of the Public Acts of 1957, entitled as amended "An act to make appropriations for the purpose of aiding the public schools, the intermediate school districts and the secular education of children enrolled in nonpublic schools; to provide for the disbursement of the appropriations; and to supplement the school aid fund by the levy and collection of certain excise taxes," as amended and added by Act

No. 285 of the Public Acts of 1964, Act No. 22 of the Public Acts of 1969, Act No. 21 of the Public Acts of 1968 and Acts No. 100 and 252 of the Public Acts of 1970, being sections 388.611, 388.612, 388.613, 388.614, 388.615, 388.618a, 388.620, 388.621, 388.622, 388.623, 388.626a, 388.627, 388.628a, 388.632 and 388.634 of the Compiled Laws of 1948; to add section 9; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

Sections amended and added.

Section 1. Sections 1, 2, 3, 4, 5, 8a, 10, 11, 12, 13, 16a, 17, 18a, 22 and 24 of Act No. 312 of the Public Acts of 1957, as amended and added by Act No. 285 of the Public Acts of 1964, Act No. 21 of the Public Acts of 1968, Act No. 22 of the Public Acts of 1969 and Acts No. 100 and 252 of the Public Acts of 1970, being sections 388.611, 388.612, 388.613, 388.614, 388.615, 388.618a, 388.620, 388.621, 388.622, 388.623, 388.626a, 388.627, 388.628a, 388.632 and 388.634 of the Compiled Laws of 1948, are amended and section 9 is added to read as follows:

388.611 School aid appropriation; deficiency, contingency account. [M.S.A. 15.1919(51)]

Sec. 1. There is hereby appropriated from the school aid fund established by section 11 of article 9 of the constitution of the state for the fiscal year ending June 30, 1965, and for each fiscal year thereafter, the sum necessary to fulfill the requirements of this act, with any deficiency to be appropriated from the general fund by the legislature. The budget director shall reduce or adjust allotments in an amount equal to .75 mills of the state equalized valuation of each local school district or 20% of the basic membership aid due the district, whichever is the lesser, for the purpose of creating a general contingency account which shall be used to meet deficiencies in estimated revenues which shall include any prior year deficit or for reasons of administrative efficiency, including those determined by appointing authorities under section 5 of article 11 of the state constitution. A statement reflecting all reductions of adjustments in allotments made under the authority of this section shall be detailed and forwarded to the education and appropriations committees before March 1, 1972. Any residue remaining in the contingency account at that time, upon recommendation of the superintendent of public instruction and approval by concurrent resolution of the legislature adopted by a majority of the members serving in each house with record roll call vote may be allotted in subsequent payments made under section 25 of this act.

388.612 Intermediate districts. [M.S.A. 15.1919(52)]

Sec. 2. From the total amount appropriated in section 1 there is appropriated to intermediate school districts as established under sections 291a to 328a of the school code of 1955, the sum necessary but not to exceed $5,500,000.00 to provide state aid to such districts under the provisions of section 16a.

388.613 Compensatory education programs; allocations, evaluation; performance contracts, rules. [M.S.A. 15.1919(53)]

Sec. 3. (1) From the amount appropriated in section 1, there is appropriated $23,000,000.00 to enable eligible school districts to establish or to continue, in conjunction with whatever federal funds may be available to them from the provisions of title I of Public Law 89-10 (Elementary and secondary education act) but not to exceed $200.00 of state funds per eligible pupil participating in such programs, comprehensive compensatory education programs designed to improve the achievement in basic cognitive skills of pupils enrolled in grades K-6 who have extraordinary need for special assistance to improve their competencies in such basic skills and for whom the districts are not already receiving additional funds by virtue of their being physically, mentally or emotionally handicapped.

(2) School districts shall be eligible for allocations from this section, for the fiscal year 1971-72 and for each of the following 2 fiscal years if at least 15% of their total enrollment in grades K-6 and not less than 30 of their pupils in grades K-6, as described in subsection (1) and as computed in subdivision (d) of subsection (3), are found to be in need of substantial improvement in their basic cognitive skills except school districts that received aid under this section in 1970-71 for schools housing grades 7 and 8 shall be funded, if the pupils in those schools are found eligible, in a manner to be determined by the department of education.

(3) The number of pupils in grades K-6 construed to be in need of substantial improvement in their basic cognitive skills shall be calculated for each school district by the following procedural steps:

(a) Using the composite achievement test score only on the state assessment battery given in January 1971, a percentile ranking shall be made statewide for the scores of pupils in grade 4 and for the scores of pupils enrolled in grade 7.

(b) The percent of pupils of the district enrolled in grade 4, as defined in subsection (1), who scored at the fifteenth percentile or lower for grade 4 in accordance with statewide norms established for the assessment battery, shall be determined and this percentage shall be multiplied by the aggregate enrollment of the district in grades K-4 on the fourth Friday following Labor day of the preceding school year.

(c) The percent of pupils of the district enrolled in grade 7, as defined in subsection (1), who scored at the fifteenth percentile or lower for grade 7, in accordance with statewide norms established for the assessment battery, shall be determined and this percentage shall be multiplied by the aggregate enrollment of the district in grades 5 and 6 on the fourth Friday following Labor day of the preceding school year.

(d) The number of pupils determined in subdivision (b) shall be added to the number of pupils determined in subdivision (c) and this resultant sum shall be construed to be the number of pupils of the district,

enrolled in grades K-6, who are in need of substantial improvement in their basic cognitive skills at the beginning of the 1971-72 school year.

(4) The tentative allocations to each eligible district shall be determined by multiplying the number of pupils determined in subdivision (d) of subsection (3), by $200.00.

(5) The tentative allocations as determined in subsection (4) shall be distributed the first year to districts in decreasing order of concentrations of pupils in grades K-6, who score on the assessment battery at the fifteenth percentile or lower for norms for the state as a whole. Distribution shall begin with the district with highest concentration of such pupils and continue in descending order of concentration until all of the moneys appropriated under subsection (1) have been distributed, if:

(a) The districts have applied for the moneys on forms provided by the department of education in accordance with rules promulgated by the state board of education.

(b) The districts have shown evidence of having established "comparability" among the schools within their boundaries in accordance with standards established by the state board of education.

(c) The districts have committed themselves, in a manner acceptable to the state board of education, to the involvement of parents, teachers and administrators in the planning and continuous evaluation of their compensatory education programs as conducted under this section.

(d) The districts have identified the performance objectives of their compensatory education programs. Performance objectives shall be concerned primarily with the improvement of pupils' performance in the basic cognitive skills.

(e) The districts have certified that they will identify or have identified, on or before the fourth Friday following Labor day of the school year, the pupils to be provided special assistance with these moneys with the pupils being selected in grades 2-6 from the lowest achievers in basic cognitive skills and in grades K-1 from among those with the lowest readiness for the acquisition of cognitive skills. The aggregate number of pupils selected from grades K-4 and from grades 5 and 6 shall bear at least the same ratio to the total enrollment in these blocs of grades as those percentages which were used for the districts in subdivisions (b) and (c) of subsection (3).

(6) A district receiving moneys under this section may use these moneys in any manner which, in the judgment of its board of education and its staff, will contribute significantly toward substantial improvements in the basic cognitive skills of the pupils. These uses may include, but are not limited to, the following:

(a) Employment of additional personnel.

(b) Purchase of instructional devices and other aides.

(c) Leasing of portable classrooms.

(d) Contracting with a public or private agency, a group of employees or a group of nonemployees.

(e) Providing inservice training for teachers and other personnel.

(f) Provision of adequate nutrition and health care to students.

(7) As a condition of receiving moneys for use in fiscal years following 1971-72, an assessment or evaluation of the progress of each pupil construed to be in need of special assistance under the section shall be made with the use of pretests and posttests. These tests shall be administered or approved for administration by the department of education in accordance with policies of the state board of education to determine the amount of progress made by the pupils toward attainment of the performance objective specified in the district's approved application as stipulated in subdivision (d) of subsection (5). For each pupil making a minimum gain during the year of at least 75% of the skills in the performance objectives specified for his program, the district shall receive the full per pupil amount of section 3 funds allocated to the district in accordance with subsection (4). For those pupils who do not achieve at least 75% gain, the district shall receive in the subsequent year an amount per pupil prorated in the proportion that the amount of actual gain made bears to 75% of the total skills listed for the programs provided these pupils. Regardless of gain levels, a district shall be paid in full for a pupil who has migrated from the district during the school year and for a pupil who has not attended school for a minimum period of 150 days because of health reasons verified by a medical authority.

(8) Not more than 0.5% of a school's total allocation under this section shall be deducted and retained by the department of education for administration and evaluation of the programs conducted under this section. The state board of education shall report to the governor and the legislature not later than October 1 of each year the results of the evaluation studies including a report on exemplary programs which promote academic achievement.

(9) The superintendent of public instruction may disallow deductions from state aid payments due to the inability of a school district to verify eligibility under this section for the school years 1968-69 and 1969-70.

(10) From the amount appropriated under this section, $500,000.00 shall be used for grants to school districts to enter into performance contracts for instructional purposes. The definition of what constitutes such programs shall be in accordance with rules promulgated by the state board of education. The department of education shall establish and supervise the contracts.

(11) The state board of education shall promulgate rules necessary to implement this act in accordance with and subject to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Compiled Laws of 1948.

388.614 Conceptually oriented mathematics program, evaluation, report. [M.S.A. 15.1919(54)]

Sec. 4. From the amount appropriated in section 1 there is appropriated to the department of education the sum of $250,000.00 to continue contractual arrangements for the statewide program of abstract conceptually-oriented mathematics utilizing the discovery method to improve the basic skills of educationally needy children attending elementary schools. The department of education shall evaluate the effectiveness of the program and submit its findings to the legislature by March 1, 1972.

388.615 Vocational education program, rules, application. [M.S.A. 15.1919(55)]

Sec. 5. From the total amount appropriated in section 1 there is appropriated the sum of $3,000,000.00 to reimburse school districts and area vocational centers for vocational education programs on an added cost basis. The definition of what constitutes such programs and reimbursement shall be in accordance with rules promulgated by the state department of education. Applications for participation in such programs shall be filed in the form prescribed by the department of education.

388.618a Basic allotment; formula; 1971-72. [M.S.A. 15.1919(58a)]

Sec. 8a. (1) To every district in the state, except as otherwise provided in this act, there shall be appropriated where required to meet the provisions of this act, a sum determined as provided in subsection (2) plus the amount allocated for tuition and transportation. No school district shall receive a smaller net allowance per membership pupil for 1971-72 than was received by the district in 1970-71 after reductions made by executive order except that no more than $10,000,000.00 shall be distributed under this provision. The apportionment of the school aid fund to the several school districts shall be governed and limited by the provisions of section 35. Whenever 2 or more districts are reorganized into a single district, either through a procedure of annexation or consolidation, the amount of state aid to be received by such new district during the 2 years immediately subsequent to the annexation or consolidation shall not be less than the total sum of state aid which was earned by all of the districts forming the new district during the last fiscal year in which the districts received aid as separate districts.

(2) The sum allocated to each school district shall be computed from the following table:

State equalized valuation behind each child	Gross Allowance	Deductible Millage
(a) $17,000.00 or more	$559.50	14

(b)	Less than $17,000.00	$661.50	20

388.619 Retirement boards, estimated aggregate compensation, waiver; allocation, retirement allowances. [M.S.A. 15.1919(59)]

Sec. 9. The provisions of Act No. 136 of the Public Acts of 1945, as amended, being sections 38.201 to 38.357 of the Compiled Laws of 1948, requiring certification by the retirement boards of estimated aggregate compensations of school employees for the ensuing year are waived. The appropriations contained herein for such purposes shall be allocated by the budget director to the retirement systems quarterly pursuant to their certification of actual compensation received by school employees. The employer contribution for current service and social security on aggregate salaries paid from federal funds to members of the Detroit and Michigan public school employees' retirement systems shall not be paid from the state's school aid fund but shall be paid from any federal or state funds otherwise payable to the school district.

Notwithstanding any other act to the contrary, in no case shall the annual retirement allowance payable to a retirant or beneficiary in chapter 1 or 2 who retired any time before July 1, 1956 be less than $2,400.00: Provided, That a person serving less than 30 years but not less than 15 years shall be entitled to a retirement allowance of not less than an amount which bears the same ratio to $2,400.00 as the total years of service of said person bears to 30 years.

Pursuant to the provisions of section 27 of chapter 1 and section 45 of chapter 2 of Act No. 136 of the Public Acts of 1945, as amended, there is appropriated for the:

MICHIGAN PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM	
For chapter 1 retirees	$ 1,940,000.00
For current obligation	154,284,000.00
For unfunded accrued liability	10,000,000.00
Subtotal	$166,224,000.00
DETROIT PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM	
For chapter II retirees	$ 760,000.00
For current obligation	27,616,000.00
For unfunded accrued liability	14,500,000.00
Subtotal	$ 42,876,000.00
Total	$209,100,000.00

388.620 Tuition allotments; special programs; limitations. [M.S.A. 15.1919(60)]

Sec. 10. (a) Any district not maintaining school within the district may participate in the school aid fund under this subsection. The total amount which shall be apportioned to any such district shall be the sum which such district shall be apportioned under other sections of this act less the amount that would be obtained by multiplying the valuation of the property within the district by 5.86 mills.

(c) Any district paying tuition for pupils being educated under the provisions of sections 771, 772, 773, 774, 778, 779 and 780 of the school code of 1955 shall be allowed an amount sufficient to pay the tuition charged the district in excess of $50.00 per pupil but less than $81.00 per pupil and all over $150.00 per pupil plus any sums which such district shall be apportioned under other sections of the act.

(d) Any district paying tuition for pupils being educated under the provisions of sections 775 to 778 of the school code of 1955 shall be allowed an amount sufficient to pay the tuition charged the district in excess of $50.00 per pupil but less than $81.00 per pupil and all over $150.00 per pupil of the minimum rate which must be charged in accordance with subsection (c) of section 13, plus any sums which such district shall be apportioned under other sections of this act.

(e) Any district operating summer school programs for the physically handicapped and/or speech defectives, emotionally disturbed and mentally handicapped as approved by the superintendent of public instruction shall be allowed up to 75% of the actual cost of the programs as determined by the superintendent of public instruction.

(f) Any district having American Indian children in attendance, who reside within the district and upon a United States government Indian reservation, shall be allowed in addition to the allowances provided by the other sections of this act an amount equal to the number of such children in attendance times 1/2 the tuition rate as computed in accordance with sections 13a and 14 and in accordance with section 582 of the school code of 1955. No district receiving federal assistance under Public Law 874, 81st Congress, as amended, shall share in the provisions of this subsection.

388.621 Transportation of pupils; review of orders. [M.S.A. 15.1919(61)]

Sec. 11. (a) Additional allotments for transportation of school children shall be made to districts in which school is not maintained in part according to law and to districts which were organized as township and rural agricultural school districts or fractional districts prior to July 1, 1955, and to primary or fourth class school districts transporting eighth grade graduates to high schools in other districts, transporting school children living within the district but living outside the village or city limits and more than 1-1/2 miles from the school they attend, or living within the corporate limits of a municipality when the area in which the children are living is a fraction of the municipality and the major portion of such municipality is contained in another single school district, and no school

is operated in the fraction of the municipality where the children can attend and where the children live more than 1-1/2 miles from the school they attend, and to fourth class school districts which do not contain within their boundaries a city or village and which transport resident school children living more than 1-1/2 miles from the school they attend, and to any school district containing 2 or more incorporated municipalities, or parts of 2 or more municipalities, operating 1 high school and 1 junior high school, or 1 combination junior-senior high school, for the transportation of those children enrolled in grades 7 through 12 who are resident in one of the municipalities and who live more than 1-1/2 miles from the school which they attend, when the school building in which those grades are taught is situated outside the corporate limits of the municipality in which the child resides, from the school aid fund in amounts determined by the superintendent of public instruction, but not to exceed 75% of the actual cost of transporting children to and from school. Allotments for transportation shall be made to school districts for children living within the city or village limits within the district boundaries and more than 1-1/2 miles from the school they attend by the nearest traveled public highway when such highway is routed outside of the city or village limits, before reaching the school the children attend. Transportation distances shall be measured along public streets and highways. The superintendent of public instruction shall have authority upon investigation by him, or someone designated by him, to review, confirm, set aside or amend the action, order or decision of the board of education or school board of any school district with reference to the routes over which school children shall be transported, a distance they shall be required to walk, and the suitability and number of vehicles and equipment for the transportation of the school children.

No allotment for transportation shall be allowed any school district which operates a bus route disapproved by the superintendent of public instruction.

District not maintaining school.

(b) Any school district not maintaining school within the district may participate in the school aid fund under this subsection. The total amount which shall be apportioned to any such district shall be an amount determined by the superintendent of public instruction but not to exceed 75% of the actual cost of transportation, less a sum equal to 5.86 mills on the valuation of the property within the district reported and determined as hereinafter provided. If the amounts deducted herein have been used to determine the aid to any such district under any other section of this act, the amount herein allotted for transportation shall be in addition to such other amounts allotted.

Mentally handicapped; waiver of restriction.

(c) Any school district providing transportation for mentally handicapped children being educated under the provisions of sections 775 to 778 of the school code of 1955 shall be allowed an amount determined by

the superintendent of public instruction but not to exceed 75% of the actual cost of transportation or more than $200.00 per pupil living more than 1-1/2 miles from the school they attend unless the superintendent of public instruction determines from the best evidence available that the pupil cannot safely walk that distance in which case the limit of 1-1/2 miles may be waived. No allowance for such pupils shall be given under subsections (a) and (b).

Physically handicapped; state schools for deaf, blind.

(d) Any school district providing transportation for physically handicapped children being educated under the provisions of sections 771 to 774 of the school code of 1955, or any school district providing daily transportation for children being educated at the Michigan school for the deaf or at the Michigan school for the blind and who cannot safely walk to the school they attend shall be allowed an amount determined by the superintendent of public instruction but not to exceed 75% of the actual cost of transportation or more than $200.00 for each pupil transported. No allowance for such pupils shall be given under subsections (a) and (b).

Emotionally disturbed.

(e) Any school district providing transportation for emotionally disturbed children being educated under section 775a of the school code of 1955, as amended, shall be allowed an amount determined by the superintendent of public instruction but not to exceed 75% of actual cost of transportation or more than $200.00 per pupil living more than 1-1/2 miles from the school they attend. No allowance for such pupils shall be given under subsections (a) and (b).

Facilities of department of mental health.

(f) Any school district providing daily transportation for children being educated or being provided day care services at facilities under the direction of the department of mental health shall be allowed an amount determined by the superintendent of public instruction but not to exceed 75% of the actual cost of transportation or more than $200.00 for each pupil transported. No allowance for such pupils shall be given under subsections (a) and (b).

Board, room allowance for mentally or physically handicapped.

(g) Any school district providing board and room for children being educated under sections 771 to 780 of the school code of 1955 shall be allowed an amount sufficient to pay the board and room up to an amount approved by the superintendent of public instruction.

Vocational centers; secondary school pupils.

(h) Any school district providing transportation for secondary school pupils to centers designated and approved as secondary area vocational centers by the department of education shall be allowed an amount

determined by the department of education but not to exceed 75% of the actual current year cost of such transportation. Not more than $1,000,000.00 shall be distributed for transportation under this subsection.

Maximum amount distributed.

(i) Not more than $32,600,000.00 shall be distributed for transportation.

388.622 Definitions; pupils. [M.S.A. 15.1919(62)]

Sec. 12. (a) As used in this act a "pupil" is defined as a child in membership in a public school, and school children are defined as children in membership in any school.

All pupils to be counted in membership shall be enrolled in accordance with sections 357 and 731 of the school code of 1955 except that all pupils regularly enrolled and working toward a high school diploma may be counted in membership regardless of age. Any former member of the armed services in attendance in the public schools, the cost of whose instruction is not paid for by other state funds or by the federal government, shall be counted in membership regardless of age. Handicapped children enrolled under the provisions of sections 771 to 780 of the school code of 1955 may be counted in membership for the ages provided in those sections.

"Elementary pupils" are defined as pupils in school membership in grades from the kindergarten to the eighth grade in districts not maintaining classes above the eighth grade and in grades from the kindergarten to the sixth grade in districts maintaining classes above the eighth grade.

"High school pupils" are defined as pupils in school membership in grades 7 to 12 except in districts not maintaining grades above the eighth.

Membership, defined; computation; uniform interpretation.

(b) "Membership" as used in this act shall be construed as registration plus receipts by transfer, plus returns, minus losses, as defined by the superintendent of public instruction in the Michigan child accounting system.

"Full-time membership" shall be construed as all membership in kindergarten to twelfth grade for those actually enrolled in regular daily attendance on the fourth Friday following Labor day of each year. The superintendent of public instruction shall give a uniform interpretation of such full-time memberships.

No pupils enrolled in school programs organized under federal or state supervision and in which the teaching costs are fully subsidized from federal or state funds shall be eligible to be counted in membership.

Any child under court jurisdiction who is placed in a private home or in a private or public institution located outside the school district in which his parents or legal guardians reside may be counted as a resident of the school district he attends if other than the district of his parents or legal guardian and shall be counted as 1-1/2 memberships.

The total membership of such children shall be computed by adding the membership days attended by all such children up to April 1 of the current school year and dividing the total by the number of days in the school year of the district up to April 1 of the current school year. The membership thus obtained shall be certified by the district to the superintendent of public instruction who shall adjust the total membership of the district accordingly in determining the school aid to be paid during the current fiscal year.

Any child whose parents or guardians live on land in this state over which the federal government has taken exclusive jurisdiction and which has not been attached to a school district for educational purposes may be included in membership by the school district which he attends and for the purpose of this act be considered a tuition pupil. Notwithstanding any other provision of this act, a school district providing kindergarten to twelfth grade educational services for department of corrections pupils or contracting with the department of corrections for such educational services may count such pupils in membership and receive state aid under this act.

The superintendent of public instruction shall give a uniform interpretation and evaluation of memberships other than full-time memberships.

Hearing impaired, physically or visually handicapped.

(c) School districts conducting programs for the hearing impaired, physically handicapped and visually handicapped shall be allocated an additional amount not to exceed 75% of the cost for equipment, for teachers who teach others to transcribe books into braille or books for visually handicapped students at all levels and for expenses incurred in transcribing and recording educational materials, including machines, paper and binding.

Intermediate school districts, trainable programs.

(d) Each intermediate school district shall be entitled to additional funds from the total amount appropriated in section 1 for the purpose of establishing programs for trainable individuals up to the age of 21 who are not currently eligible for mentally handicapped programs type A or B. The amount appropriated for these programs shall not exceed 75% of the actual cost of operating the program including the cost of transportation. Each intermediate school district is authorized to use moneys in its general fund or special education fund not otherwise restricted or contributions from local school districts or individuals for the support of such programs.

Special education; limitations.

(e) The amounts appropriated herein for special programs under the provisions of sections 771 to 780a and 307a to 324a of the school code of 1955, and for school social workers, school diagnosticians, physical therapists, occupational therapists, and other professionals, shall not exceed 75% of the actual cost of salaries, exclusive of administrative and clerical salaries, not to exceed $8,100.00 for any individual salary for such programs

as determined by the superintendent of public instruction. The salaries of directors and supervisors of special education programs whose full-time activities are devoted solely to special education programs shall be reimbursed under the provisions of this subsection. From the total amount appropriated in section 1 there is appropriated a sum not to exceed $55,000,000.00 for special education programs.

Remedial reading programs.

(f) School districts offering remedial reading programs approved by the superintendent of public instruction shall be entitled to 75% of the actual cost of the salary, not to exceed $8,100.00 for any individual salary, of each remedial reading teacher approved by the superintendent of public instruction. The superintendent of public instruction may provide by rules for the maximum number of pupils per teacher to be counted. From the total amount appropriated in section 1 there is appropriated a sum not to exceed $3,400,000.00 for remedial reading programs to be used for teachers' salaries at the 4 to 12 grade levels only. A school district funded under section 3 shall not receive funds under this subsection for any remedial reading program except when the allocation under section 3 is less than the sum of the district's 1970-71 allocations under section 3 and for remedial reading in which case a district employing at least the same number of remedial reading teachers as it employed in 1970-71 shall receive remedial reading funds in an amount equal to the 1970-71 remedial reading allocation or an amount sufficient to make the combination of section 3 and remedial reading funds for 1971-72 equal to the 1970-71 combination, whichever is less. A school district not eligible for funds under section 3 shall receive under this subsection for 1971-72 an amount equal to the remedial reading funds received for 1970-71 if it continues to employ at least the same number of remedial reading teachers. If the number of remedial reading teachers employed in 1971-72 is less than the number employed in 1970-71 a proportionate reduction shall be made in the funds for the district.

Programs for pregnant persons; teachers' salaries.

(g) From the amount appropriated in section 1, there is appropriated a sum not to exceed $300,000.00 to be used for the salaries of teachers in alternative education programs for pregnant persons as approved by the superintendent of public instruction in accordance with Act No. 242 of the Public Acts of 1970, being sections 388.391 to 388.394 of the Compiled Laws of 1948. Local school districts and intermediate school districts providing approved programs shall be entitled to 75% of the actual cost of the salary, not to exceed $8,100.00 for any individual salary, of each teacher approved by the superintendent of public instruction.

388.623 Definitions; elementary tuition pupil. [M.S.A. 15.1919(63)]

Sec. 13. (a) An "elementary tuition pupil" is a child of school age attending school in grades kindergarten to sixth in a district other than of his residence and whose tuition is paid by the school board of the

district of his residence. If the district in which such child is in attendance does not operate grades above the eighth, elementary tuition pupils shall also include pupils enrolled in the seventh and eighth grades.

High school tuition pupil.

(b) A "high school tuition pupil" is a child of school age attending school in grades seventh and eighth in a district other than that of his residence and in which grades above the eighth are being maintained, and in grades ninth to twelfth in a district other than that of his residence and whose tuition is paid by the school board of the district of his residence.

Date and formula for charging tuition.

(c) Every school district having tuition pupils enrolled on the fourth Friday following Labor day of each year, shall charge the school district, in which such tuition pupil resides, tuition in at least the amount of the differences between the per capita cost as determined in section 14 and the per pupil membership allowance provided in sections 8 and 10. Except that in the case of nonresident pupils in part-time membership, an additional allowance for such child shall be made to the school district in an amount equal to the difference between the prorated per capita cost as determined in section 14 and the prorated per pupil membership allowance as provided in sections 8 and 10.

Attendance by direction of probate court, tuition.

(d) Notwithstanding the provisions of subsections (a), (b) and (c), a child residing in a juvenile or detention home operated by a probate court and attending school by direction of the court in the school district of residence of his parent or legal guardian shall not be counted as a tuition student but shall be counted in resident membership in that school district. A child residing in the home of his parent or legal guardian but who, by assignment of a probate court, attends school in another school district, which school is operated for juveniles under court jurisdiction, shall not be counted as a tuition student but shall be counted in resident membership in the school operated for juveniles; and a child residing in the home of his parents or legal guardian or juvenile home but who, by direction of local school authorities and approval of the probate court, may be enrolled in school in another school district shall not be counted as a tuition student but shall be counted in resident membership.

Child placed in state institution by parents.

(e) Any child placed in a state institution by parents shall be counted in resident membership of the school district in which the child is enrolled, and an additional allowance for such child shall be made to the school district in the amount equal to the difference between the per capita cost as determined in section 14 and the per pupil membership allowance as provided in sections 8 and 10.

388.626a Intermediate districts; apportionment of aid, data processing, educational media centers. [M.S.A. 15.1919(66a)]

Sec. 16a. (1) There shall be apportioned to each intermediate school district an amount equal to the operating budget of the district multiplied by the percentage that the total state aid received by all of the constituent districts of the intermediate district under the provisions of the state school aid act in effect during the preceding school year was of the total current operating expenditures of all the constituent districts of the preceding year, except that no intermediate district shall receive aid on a basis of less than 50% of its approved budget.

(2) The operating budget of the intermediate unit shall be the budget finally adopted by the board of education in accordance with all constitutional and statutory hearings and after the allocation of millage has been made by the county tax allocation board. The budget total shall be reduced by the amounts allocated for building and site expenditures, cooperative educational programs, and any program not approved by the superintendent of public instruction.

(3) The current operating expenditures of the constituent districts shall be in accordance with the classification of expenditures used in reporting receipts, expenditures and other financial data to the superintendent of public instruction.

(4) Intermediate districts formed by the consolidation of 2 or more county or intermediate school districts shall be entitled to an additional allotment of $3,500.00 for each county included in the new district for a period of 3 years following consolidation.

[(5) From the amount appropriated in section 1 there is appropriated a separate fund of $400,000.00 for the purpose of providing funds to intermediate districts which operate data processing programs, using a service fee method of financing on a cooperative basis with local school districts as approved by the superintendent of public instruction. Intermediate school districts shall apply for and receive funds in accordance with rules promulgated by the state board of education.

(6) From the amount appropriated in section 1 there is appropriated a separate fund of $100,000.00 for the purpose of providing funds to intermediate districts which operate educational media centers in accordance with sections 291b to 291d of the school code of 1955, and the criteria established by the state board of education and the superintendent of public instruction.] *

388.627 Valuation of districts; reductions. [M.S.A. 15.1919(67)]

Sec. 17. The valuation of any whole district shall be the total assessed value of the property contained therein as fixed by the local assessing officer or officers, township or city board of review, which in turn shall be proportionately increased or decreased to the basis of the valuation of the township or city containing said district, as fixed by the county board of equalization, and the result in turn proportionately increased or decreased

to the basis of the valuation of the county containing said district as last fixed by the state board of equalization.

The valuation of a fractional school district shall be the sum of the valuations of the fractions thereof, each of which shall be computed in the same manner as a whole school district.

The valuations of property assessed under the provisions of Act No. 189 of the Public Acts of 1953, as amended, being sections 211.181 and 211.182 of the Compiled Laws of 1948, shall be deducted from the total valuation of a district in cases where school taxes levied against such property are not collected from the lessee or user of the property. The credit so obtained by a district in the application of the formula provided in section 8a shall forever be a lien against the district and shall be paid by the district to the school aid fund at such time only as the taxes referred to above are collected.

The valuation of property located on land over which the federal government has exclusive jurisdiction and upon which school taxes have been levied in accordance with federal law shall be deducted from the total valuation of a district if credits against such taxes, as permitted by federal law, result in a payment to the district of an amount less than the product of the valuation of such property, times the millage referred to in section 8a. Any amount of such taxes collected shall be deducted from the school aid to which the district is entitled under sections 8a, et seq., up to an amount equal to the above product.

Whenever taxes levied for operating purposes against property constituting at least 10% of the valuation of a district are paid under protest and are thus unavailable to the district, the total valuation of the district for the purposes of this act shall be reduced by the valuation of such property. The credits so obtained by a district in the application of the formula provided in section 8a shall forever be a lien against the district and shall be paid by the district to the school aid fund at such time only as the taxes referred to above are collected.

The valuation of any district shall be reduced under the following conditions and in the following manner:

(a) An application may be filed by the school district in form and content as described by the superintendent of public instruction showing the total taxes levied on property located within the school district by all taxing agencies including the school district but excluding taxes levied for school operating purposes.

(b) Using the total taxes as last reported by the state tax commission

*The bracketed items were vetoed by the governor. The veto message appears at the end of the Public Acts, post. —Editor.

for the entire state but excluding taxes levied for school operating purposes, the superintendent of public instruction shall determine the tax rate for the entire state. He shall determine the tax rate for the applicant school district by dividing the figure obtained in subdivision (a) by the district valuation.

(c) If the resulting tax rate for the applicant school district is 125% or more of the resulting tax rate for the school districts of the state, the valuation of the applicant school district shall be reduced by the percent by which the resulting tax rates on property located within the applicant school district exceeds 125% of the resulting tax rates on property located in all school districts of the state. Any district qualifying for state aid under 1 of the formulas provided in subsection (2) of section 8a shall not qualify for state aid under a different formula in that subsection solely as a result of the reduction in valuation under the provisions of this section. Not more than $20,000,000.00 shall be paid as the result of reduction of valuation under this section. A district receiving a membership guarantee under section 8a shall not receive assistance under this section unless the allowance under this section is greater than the membership guarantee under section 8a. A district shall not receive both a membership guarantee under section 8a and assistance under this section.

388.628a Emergency reorganization of districts; additional allotments; limitations. [M.S.A. 15.1919(68b)]

Sec. 18a. (1) Whenever a school district, in whole or in part, was attached to another district prior to January 1, 1969, as authorized by Act No. 239 of the Public Acts of 1967, as amended, being sections 388.711 to 388.720a of the Compiled Laws of 1948, the amount of state aid to be paid in the year 1971-72 to the district to which territory was attached shall be increased by $200.00 per pupil added as a result of such attachment in the year 1968-69 for the purpose of bringing about uniformity of educational opportunity for all the pupils of the district. The number of student residents of the attached areas and counted as resident students on September 27, 1968 shall serve as the basis for the payment of these funds.

(2) School districts receiving students under the provisions of Act No. 239 of the Public Acts of 1967, as amended, and divided and attached between January 1, 1969 and July 1, 1969, shall be granted the sum of $150.00 per student resident of the area received as a direct result of the attachment. This money is to be deposited in the general fund account of the districts receiving the students and used for the purposes of bringing about uniformity of educational opportunity for all the pupils of the enlarged school district. The number of students each school district receives under the provisions of Act No. 239 of the Public Acts of 1967, as amended, shall be determined by a membership count as made by the state department of education on September 26, 1969. A report of the membership audit shall be sent to the state treasurer who shall pay the required amounts from

the school aid fund prior to December 31, 1971. Not more than $600,000.00 is appropriated for the purposes of this subsection.

(3) Any funds owed to the attached school district including but not limited to any overpayment of bills paid by the attached district, delinquent property taxes for operating purposes, reimbursement due the attached school district from the state for transportation and tuition or any funds due the district from federal or other state sources, or gifts received by or in behalf of the attached school district shall be placed in the school aid fund.

388.632 Apportionments; basic dates; full year school; special education. [M.S.A. 15.1919(72)]

Sec 22. The apportionments, and limitations thereof, made under this act shall be made on the membership and number of teachers employed as of the fourth Friday following Labor day of each year, on the number of pupils for whom transportation is allowed for the preceding school year, elementary or high school tuition payments for the current fiscal year, per capita cost of pupils for the preceding year, and on the state equalized valuation of each school district for the calendar year. In addition, those districts maintaining school during the entire year, as provided under section 731 of the school code of 1955, shall count memberships and teachers in accordance with rules established by the state board of education. The membership in the programs for the physically and mentally handicapped and the number of instructors and teachers in speech correction, visiting teacher programs and professional employees other than classroom teachers approved by the superintendent of public instruction as necessary to carry on approved programs under the provisions of sections 771 to 780 of the school code of 1955 shall be counted as of the fourth Friday following Labor day.

388.634 Apportionment, time; certification of trailer coach fees. [M.S.A. 15.1919(74)]

[Sec. 24. The superintendent of public instruction shall, on or before March 15 of each fiscal year, make the apportionment among the public school districts of the state as required in sections 8 et seq. Before March 1 of each year, each school district shall certify to the superintendent of public instruction the amount of revenue received for school operating purposes during the previous calendar year as a result of Act No. 243 of the Public Acts of 1959, as amended, being sections 125.1001 to 125.1097 of the Compiled Laws of 1948.]*

Sections repealed.

Section 2. Sections 8b, 14a and chapter 2 of Act No. 312 of the Public Acts of 1957, as amended and added, being sections 388.618b, 388.624a and 388.655 to 388.666a of the Compiled Laws of 1948, are repealed.

This act is ordered to take immediate effect.

Approved September 29, 1971.

ACT 225, MICH. PUB. ACTS OF 1972

AN ACT to provide for emergency financial assistance for insolvent school districts; to prescribe certain powers and duties of the intermediate board of education in connection therewith; to provide a procedure for reorganization of such school districts; to provide for continuance of the state committee on reorganization of school districts; to provide certain powers and duties of the state board of education in connection therewith; to create an emergency loan revolving fund; and to make an appropriation.

The People of the State of Michigan enact:

388.221 **Insolvent school districts; definitions. [M.S.A. 15.1919(251)]**

Sec. 1. As used in this act:

(a) "School district" does not include an intermediate school district.

(b) "State board" means the state board of education.

388.222 **Applicability of act. [M.S.A. 15.1919(252)]**

Sec. 2. The procedures provided by this act may be used notwithstanding any other provision of law to the contrary.

388.223 **Eligibility for loan. [M.S.A. 15.1919(253)]**

Sec. 3. The board of education of a school district that incurs a deficit and is unable to meet its financial obligations and the fiscal conditions of which is attributable at least in part to annual collections on tax settlement day of less than 85% of ad valorem taxes levied by the district is eligible to apply for an emergency loan from the state. Such a district shall be considered an insolvent district.

388.224 **Certification of insolvency. [M.S.A. 15.1919(254)]**

Sec. 4. A school district to be eligible for an emergency loan shall certify, based upon a certified audit by the state treasury department, that the school district is insolvent.

388.225 **Application for loan, amount; review. [M.S.A. 15.1919(255)]**

Sec. 5. The board of education of a school district meeting the criteria set forth in section 4 may apply to the state board for an emergency loan to meet its financial needs until the end of the fiscal year in which application is made. If, after review, the state board of education finds that the district meets the criteria set forth in section 4, a recommendation for an emergency loan shall be submitted to the governor for review and recommendation to the legislature.

388.226 **Bonds, issuance, requirements; repayment of loan; monthly report. [M.S.A. 15.1919(256)]**

Sec. 6. The board of education of a school district eligible to receive an emergency loan under the provisions of this act shall issue bonds in the amount

of the emergency loan, made payable to the state, in equal installments, in not more than 10 years plus interest at the rate of 6% per annum beginning with the first fiscal year after receipt of the loan. The bonds shall be payable out of any funds of the school district including state appropriations available to the school district under any act. The amount due on the bonds with interest in any fiscal year shall be deducted in equal portions from the last 3 payments of state school aid due the school district in each fiscal year. The bonds shall also be the full faith and credit obligations of the school district and all taxable property within the school district shall be subject to the levy of ad valorem taxes to repay the principal and interest obtained under the bonds without limitation as to rate or amount. The board of education shall submit its budget for review and approval to the state department of education. This budget shall be a balanced budget and shall include a minimum repayment of 10% of the original face amount of the loan received under this act, plus interest at the statutory rate. The district shall submit a monthly expenditure report to the state department of education.

388.227 Operating millage, minimum levy; reorganization. [M.S.A. 15.1919(257)]

Sec. 7. However, any school district not levying a minimum of 20 mills for operating purposes in the calendar year for which it receives an emergency loan shall be reorganized by the state board of education following recommendation by the state committee on reorganization of school districts.

388.228 Expenditures within revenues; balanced budget. [M.S.A. 15.1919(258)]

Sec. 8. The state department of education shall take any steps necessary to assure that the expenditures of a school district which receives an emergency loan under the provisions of this act shall not exceed revenues on an annual basis and that the school district maintains a balanced budget.

388.229 Reorganization; if unable to balance budget. [M.S.A. 15.1919(259)]

Sec. 9. If, upon application for an emergency loan, a board of education certifies that the school district will not be able to balance its budget, the district shall be reorganized by the state board of education following recommendation by the state committee on reorganization of school districts.

388.230 Balanced budget; reorganization. [M.S.A. 15.1919(260)]

Sec. 10. A school district receiving an emergency loan under the provisions of this act shall balance its budget in the fiscal year immediately following the fiscal year for which it receives an emergency loan or, following recommendation by the state committee on reorganization of school districts, shall be reorganized by the state board of education.

388.231 Default in loan payment; reorganization. [M.S.A. 15.1919(261)]

Sec. 11. A school district receiving an emergency loan under the provisions of this act, which defaults in repayment of the loan, shall be reorganized by

the state board of education following recommendation by the state committee on reorganization of school districts.

388.232 Reorganization; hearing, notice, recommendations. [M.S.A. 15.1919(262)]

Sec. 12. Prior to reorganization of a school district under this act, the state committee on reorganization of school districts shall hold a hearing in the district to be reorganized. Notice of the time and place of the hearing shall be given the voters of all school districts involved in the proposed reorganization. The boards of education of the intermediate districts involved in the proposed reorganization shall make recommendations to the state committee regarding the proposed reorganization.

388.233 Determination if reorganization warranted; report. [M.S.A. 15.1919(263)]

Sec. 13. Within 20 days after receipt of a transcript of the hearing and recommendations of the boards of education of the intermediate districts, the state committee on reorganization of school districts shall determine if conditions exist warranting reorganization of the district under this act. Upon a determination by the state committee that conditions in a school district warrant reorganization, the state committee shall transmit its report with recommendations to the state board of education.

388.234 Report and recommendations; comments; determination. [M.S.A. 15.1919(264)]

Sec. 14. The state board of education shall publish the report and recommendations of the state committee on reorganization of school districts and shall invite objections or comments to be filed with it within 20 days following publication of the report. The state board then shall consider the report of the state committee, together with the comments and objections filed, and make a determination as to indorsement of the finding of the state committee.

388.235 Reorganization by state board; finality. [M.S.A. 15.1919(265)]

Sec. 15. The state board, upon indorsement of the finding of the state committee on reorganization of school districts that reorganization of a school district is warranted, shall reorganize the district with 1 or more districts contiguous to it in such a manner as will provide the most equitable educational opportunity for all of the students of the reorganized district, and shall determine the effective date of reorganization. Action by the state board of education shall be final.

388.236 Bonded indebtedness of original and reorganized school districts. [M.S.A. 15.1919(266)]

Sec. 16. If a school district attached under the provisions of this act at the time of reorganization has a bonded indebtedness incurred after December 8, 1932, its identity shall not be lost and its territory shall remain as an assessing unit for purposes of such bonded indebtedness until the indebtedness has been retired or the outstanding bonds refunded by the reorganized district. The

board of the reorganized district, or the boards of districts receiving school buildings with an existing bonded debt shall constitute the board of trustees for the original district having a bonded indebtedness and the officers of the reorganized or successor district shall be the officers for the original district. If any original bonds of the reorganized district have been refinanced in any way, the state board of education shall make the final determination as to placement of the responsibility with the 1 or more boards of education receiving the buildings as to their responsibility in acting as the board of trustees for the original district. The board of each district assigned the responsibility as the board of trustees for any bonded indebtedness of the divided district shall certify and order the levy of taxes for the bonded indebtedness in the name of the original district.

388.237 Assumption of bonded indebtedness. [M.S.A. 15.1919(267)]

Sec. 17. Any time after 3 years following the reorganization of a school district under this act, a district receiving a building having an existing bonded indebtedness and assuming the responsibilities set forth in section 16, may assume the obligation of the bonded indebtedness incurred after December 8, 1932, of the school building attached to its district under the provisions of this act, and pay the same from the proceeds of a debt retirement tax levy spread uniformly over the territory of the reorganized or successor district when the electors of the reorganized or successor district approve an increase in the limitation on taxes for that purpose and the school tax electors of the district have approved the assumption of such bonded indebtedness. Assumption of the bonded indebtedness of an original school district does not release the territory of the original district from the final responsibility of paying the obligation or rescind the increase in the limitation on taxes pledged to the bond issue or available to it in the original district, nor be construed as so doing. When the bonded indebtedness of an original district has been so assumed, the board of the reorganized or successor district shall certify and order the levy of taxes for the bonded indebtedness equivalent in terms of money to those required by the terms under which the indebtedness was originally incurred and carry out all provisions of the original bond contract. The election to assume the bonded indebtedness of an attached district may be held at any time after 3 years following the effective date of reorganization when a proposal is placed before the school tax electors to increase the bonded indebtedness of the combined district.

388.238 Committee on reorganization; continuing existence. [M.S.A. 15.1919(268)]

Sec. 18. The state committee on reorganization of school districts shall continue in existence for purposes of this act, notwithstanding any expiration date otherwise provided by law.

388.239 Emergency loan revolving fund; approval of loan. [M.S.A. 15.1919(269)]

Sec. 19. The school emergency loan revolving fund is created in the state treasury from which emergency loans shall be made to school districts as

provided in this act. The fund shall consist of sums appropriated by the legislature plus repayments and interest on loans. The treasurer shall transfer any amount in the fund in excess of $300,000.00 to the general fund. Upon approval of an application for an emergency loan by concurrent resolution of the legislature or, when the legislature is not in session by majority vote of the members of the special commission on appropriations created by Act No. 120 of the Public Acts of 1937, as amended, being sections 5.1 to 5.5 of the Compiled Laws of 1948, the state treasurer shall issue his warrant on the fund for the amount of the loan. There is hereby appropriated from the general fund to the school emergency loan revolving fund the sum of $300,000.00.

388.240 Expiration date. [M.S.A. 15.1919(270)]

Sec. 20. This act shall expire June 30, 1973.

This act is ordered to take immediate effect.
Approved July 25, 1972.

ACT 1, MICH. PUB. ACTS OF 1973

AN ACT to amend section 681 of Act No. 269 of the Public Acts of 1955, entitled "An act to provide a system of public instruction and primary schools; to provide for the classification, organization, regulation and maintenance of schools and school districts; to prescribe their rights, powers, duties and privileges; to provide for registration of school districts, and to prescribe powers and duties with respect thereto; to provide for and prescribe the powers and duties of certain boards and officials; to prescribe penalties; and to repeal certain acts and parts of acts," being section 340.681 of the Compiled Laws of 1970; and to add section 689.

The People of the State of Michigan enact:

Section 1. Section 681 of Act No. 269 of the Public Acts of 1955, being section 340.681 of the Compiled Laws of 1970, is amended and section 689 is added to read as follows:

Sec. 681. (1) Any school district, by a majority vote of the registered school tax electors voting on the question at an annual or special election called for that purpose, may borrow money and issue bonds of the district to defray all or any part of the cost of purchasing, erecting, completing, remodeling, improving, furnishing, refurnishing, equipping, or reequipping school buildings, structures, athletic fields, playgrounds, or other facilities, or any parts thereof or additions thereto; acquiring, preparing, developing, or improving sites, or any parts thereof or additions thereto, for school buildings, structures, athletic fields, playgrounds, or other facilities; purchasing school buses; participating in the administrative costs of an urban renewal program through which the school district desires to acquire a site or addition thereto for school purposes; refunding all or any part of existing bonded indebtedness; or the accomplishing of any combination of the foregoing purposes. No school district shall issue bonds under this chapter for an amount greater than 15% of the total assessed valuation of the district, nor shall the bonded indebtedness of a district extend beyond a period of 30 years for money borrowed. Refunding bonds or the refunding part of any such bond issue shall not be deemed to be within the 15% limitation but shall be deemed to

be authorized in addition thereto. Any bond qualified under section 16 of article 9 of the 1963 state constitution and any implementing legislation shall not be included for purposes of calculating the foregoing 15% limitation.

(2) Notwithstanding subsection (1) a district that at any time has an operating or projected operating deficit in excess of $100.00 per membership pupil may borrow a sum of not more than $75,000,000.00 and issue its negotiable interest bearing notes or bonds for the purpose of funding the deficit in accordance with this section. The authority granted by this section shall be in addition to and not in derogation of any power granted to a district by any other provision of this or any other act.

(3) The existence of the operating or projected operating deficit and the amount thereof shall be determined by the department of treasury, using normal school accounting practices. If the department of treasury determines that there is an operating or projected operating deficit, it shall make its determination, which shall also include the total amount of the operating or projected operating deficit, the amount of the operating or projected operating deficit per membership pupil and the payments to the district from the school aid fund established by section 11 of article 9 of the state constitution during the fiscal year immediately preceding the fiscal year in which the notes or bonds herein authorized are issued, adjusted to show what those payments would have been had they been derived only from the sales tax moneys required to be deposited in the school aid fund, hereinafter referred to as "sales tax state aid payments". The determination by the department of treasury shall be final and conclusive as to the existence of an operating or projected operating deficit, the amount thereof, the amount thereof per membership pupil and the sales tax state aid payments.

(4) The notes or bonds may be issued in 1 or more series by resolution adopted by the board of the district, which resolution shall in each case make reference to the determination of the department of treasury. The amount of any note or bond issued shall not exceed the amount of the operating deficit as shown by the determination. The total aggregate amount of notes or bonds that may be issued and outstanding by any district under this section shall not exceed the amount as may be serviced as to their maximum annual principal and interest requirements by an amount equal to 50% of the sales tax state aid payments. The notes or bonds shall pledge primarily for their payment either of the following sources of revenue:

(a) Receipts derived from the imposition on an excise tax levied pursuant to section 689.

(b) Receipts derived from the levy and collection of an ad valorem tax levied upon all taxable real and personal property within the district of not more than 2.25 mills for each year the notes or bonds are outstanding.

The district shall pledge as secondary security for the notes or bonds future state aid moneys and any other funds of the district legally available therefor.

(5) The notes or bonds shall mature serially with annual maturities in not more than 10 years from their date and shall bear interest, payable annually or semiannually, at a rate or rates not exceeding 6½% per annum. The first principal installment on the notes or bonds shall be due not more than 1 year from the date thereof and a principal installment on the notes shall not be less than ⅓ of the principal amount of any subsequent principal installment. The notes or bonds may be made subject to redemption prior to maturity with or without premium in a manner and at times as shall be provided in the resolution authorizing the issuance of the notes or bonds.

(6) Notes or bonds issued under this section shall be valid and binding obligations of the district, notwithstanding a subsequent judicial determination of the invalidity of any legislation providing for state aid payments to districts or of the system of taxation for the support of the public school system or of a specific ad valorem or other tax that a district may be authorized to levy, it being the intent and purpose that the notes or bonds and the interest thereon be promptly paid when due from the first moneys available to the district not pledged for other indebtedness and except to the extent that the use is restricted by the state constitution or the laws of the United States of America.

(7) Before a district shall issue any notes or bonds under this section it shall make sworn application to the municipal finance commission on forms to be furnished by the municipal finance

commission for permission to do so and shall attach thereto the determination of the department of treasury and a certified copy of the resolution authorizing the notes or bonds. Notes or bonds shall not be issued hereunder until the district has first secured approval of the municipal finance commission to the issuance and to the form of notice of sale proposed to be used. In determining whether a proposed issue of notes or bonds shall be approved the municipal finance commission shall take into consideration: (a) Whether the notes or bonds conform to this section; and (b) whether the amounts pledged for the payment of the notes or bonds will be sufficient to pay the principal and interest as the same becomes due. The municipal finance commission may require the district to reduce the amount of the note or bond issue or to alter the schedule of repayment. The provisions of chapter 2 of Act No. 202 of the Public Acts of 1943, as amended, being sections 132.1 to 132.4 of the Michigan Compiled Laws, relating to the municipal finance commission, its powers and duties and its orders shall govern with respect to the notes or bonds authorized by this section.

(8) The notes or bonds shall be sold at not less than par and at public sale after notice by publication at least 14 days before the sale in a publication printed in the English language and circulated in this state, which carries as part of its regular service notices of sale of municipal bonds and which are approved by the municipal finance commission as a publication complying with the foregoing qualifications or at private sale as authorized by the municipal finance commission. The proceeds of sale of any notes authorized under this section shall be used solely for the purpose of paying necessary operating expense of the district, including the payment of principal of and interest on notes or bonds of the district issued for operating purposes under this or any other act.

(9) A board of education which borrowed pursuant to subdivisions (2) to (8) of section 681 shall submit its budget for review and approval to the department. The department shall take any steps necessary, subject to the district's contracts and statutory obligations to assure that the expenditures of a school district which receives moneys under this amendatory act shall not exceed revenues on an annual basis and that the school district maintains a balanced budget.

(10) The school district shall file a report with the auditor general 45 days after the effective date of this act and every 30 days thereafter disclosing the results of the financial operation of the district for the first 30 days and 30 days thereafter following the effective date of this act. The auditor general shall evaluate the report and his findings shall be forwarded to the legislature.

Sec. 689. (1) The board of a district of the first class having boundaries coterminous with those of a city which imposes a city income tax by ordinance adopted pursuant to Act No. 284 of the Public Acts of 1964, as amended, being sections 141.501 to 141.787 of the Michigan Compiled Laws, may, by resolution adopted by a majority of its members elected and serving, adopt, levy, assess, and collect an excise tax, upon income received, earned, or otherwise acquired by corporations and resident individuals. An excise tax so adopted shall not exceed 50% of the liability of the corporation or resident individual for a 2% income tax, imposed by the city with coterminous boundaries.

(2) A resolution so adopted shall continue in effect until rescinded by a subsequent resolution. A tax imposed pursuant to this section may not be rescinded or the rate thereof reduced if there are outstanding obligations for which the tax is pledged.

(3) A resolution so adopted shall provide that all taxpayers subject to the tax imposed by the resolution may elect to compute their tax for a calendar year, or fiscal year, during which the tax is made effective or rescinded, by any of the following methods:

(a) The tax may be computed as if the tax was effective on the first day of the calendar year, or the taxpayer's fiscal year, and the amount so computed multiplied by a fraction, the numerator of which is the number of months the tax was in effect during the taxpayer's calendar or fiscal year, and the denominator of which is the number of months in the taxpayer's calendar or fiscal year. A portion of a month which is 15 days or more shall be considered a month and a period of less than 15 days shall be disregarded.

(b) The tax may be computed by determining the amount of the city tax giving rise to the district tax which is allocable to the period the district tax is in effect in accordance with any accounting method satisfactory to the administrator.

(4) A district adopting a tax pursuant to this section shall certify within 5 days to the city clerk of the city with coterminous boundaries the adoption of the resolution and tax. The effective date of a tax imposed by a district pursuant to this section shall be the first day of the month which is 20 days or more following the adoption of the resolution, unless the resolution provides otherwise. The tax shall not be declared to be retroactively effective prior to the first day of the calendar year in which the resolution was adopted. The enforcement, collection, and refund authority of the city with coterminous boundaries shall continue in effect after the effective date of expiration with respect to liabilities incurred during the period the tax imposed by the district pursuant to this section was in effect.

(5) A district tax imposed by resolution passed pursuant to this section shall be administered by the administrator designated by the city having boundaries coterminous with the district to administer the city tax, and the treasurer of that city shall collect and account for the revenue. After deducting the amount of any refunds, the city treasurer shall pay over the balance to the district as soon as practicable. As often as practicable, but not less often than monthly, the city treasurer shall pay over and distribute to the district the amount of taxes which it is estimated to be entitled to which are received in the form of withholding remittances and estimated taxes paid.

(6) A resolution imposing a district tax pursuant to this section shall provide for withholding and remitting by employers doing business or maintaining a place of business within the district, for declaration and payment of estimated taxes, for the promulgation by the administrator of appropriate rules, for the appeal from the administrator's decisions, for judicial review, for interest and penalties, for jeopardy assessments, for a statute of limitations, for consolidated and joint returns, for refunds, and for such other provisions as are necessary so that the district tax may be administered, enforced, and collected in substantially the same manner as the tax imposed by the city with coterminous boundaries, and the administrator shall prepare and make available all withholding tables and tax return and other forms as are necessary to administer the district tax.

(7) For purposes of this section, the terms "resident individual", "corporation", "fiscal year", "administrator", "employer", "person", "business", and "doing business" have the same meaning as in Act No. 284 of the Public Acts of 1964, as amended, and the term "taxpayer" means a person required by the district's resolution to file a return with respect to, or to pay, the tax.

Section 2. Pursuant to section 8 of article 3 of the state constitution, the legislature requests the opinion of the supreme court as to the constitutionality of this act.

Section 3. This amendatory act shall take effect March 13, 1973, or when Senate Bill No. 112 of the 1973 Regular Session is enacted into law, whichever is later.

This act is ordered to take immediate effect.

Approved, March 12, 1973

ACT 2, MICH. PUB. ACTS OF 1973

AN ACT to amend the title of Act No. 258 of the Public Acts of 1972, entitled "An act to make appropriations for the purpose of aiding in the support of the public schools and the intermediate school districts of the state; to provide for the disbursement of the appropriations; to permit school districts to borrow in anticipation of the payment of state aid and to regulate the effect thereof; to provide penalties for violation of the act; to supplement the school aid fund by the levy and collection of certain excise taxes; and to repeal certain acts and parts of acts," as amended, being sections 388.1101 to 388.1279 of the Compiled Laws of 1970; and to add sections 138, 139 and 140.

The People of the State of Michigan enact:

Section 1. The title of Act No. 258 of the Public Acts of 1972, as amended, being sections 388.1101 to 388.1279 of the Compiled Laws of 1970, is amended and sections 138, 139 and 140 are added to read as follows:

TITLE

An act to make appropriations for the purpose of aiding in the support of the public schools and the intermediate school districts of the state; to provide for the disbursement of the appropriations; to permit school districts to borrow and to regulate the effect thereof; to provide for issuance of bonds and other evidences of indebtedness by the state; to provide penalties for violation of the act; to supplement the school aid fund by the levy and collection of certain taxes; and to repeal certain acts and parts of acts.

Sec. 138. (1) The board of education of a school district of the first class may apply to the municipal finance commission for cash advances to meet the school district operating needs which occur before the end of the fiscal year in which the application is made, if the board has indicated by official resolution its intention to levy 2.25 mills for the retirement of an operating or projected operating deficit, or has levied an excise tax of at least 15% of the liability of the corporation or resident individual, pursuant to either subdivision (b) of subsection (4) of section 681 or section 689 of Act No. 269 of the Public Acts of 1955, as amended, being sections 340.681 and 340.689 of the Michigan Compiled Laws. If, after review, the municipal finance commission finds that the district does need the cash advances requested, the municipal finance commission, by an appropriate order which states the amount to be advanced, shall direct the state treasurer to pay to the school district the amount stated in the order, and the state treasurer shall promptly pay the amount to the treasurer of the school district from the moneys appropriated for that purpose by this section.

(2) A school district receiving an advance under this section shall issue notes in the amount of the advance, made payable to the state of Michigan, due in not more than 180 days after the date of the notes, with interest at 5% per annum. The notes shall be repayable from borrowing authorized by law to fund advances made under this section, or from any other funds legally available to the district for the repayment. If a school district receiving advances from the state under this section has not repaid the advances when due, then the state treasurer shall deduct equal amounts from each state aid payment due the school district thereafter, so that the advances with interest at 5% per annum shall be repaid in 2 years from the date the notes become due.

(3) A school district shall not receive more than $30,000,000.00 in advances under this section in any 1 school year.

(4) The school operating advance fund is created in the state treasury from which advances shall be made to school districts as provided in this section. The fund consists of sums appropriated by the legislature. The state treasurer shall issue his warrant on the fund for the amount of the advance to be made in accordance with subsection (2). There is appropriated from the general fund to the school operating advance fund the sum of $30,000,000.00. Moneys received upon repayment of an advance shall be deposited in the general fund.

Sec. 139. (1) The state treasurer may borrow money and issue negotiable interest bearing state notes for the purpose of making loans to school districts that at any time have an operating or projected operating deficit in excess of $100.00 per membership pupil in accordance with this section. The state notes issued in accordance with this section shall not be a general obligation of the state, shall not pledge the full faith and credit of the state and shall not be an indebtedness of the state within the meaning of any constitutional limitation on state indebtedness, but shall be payable solely and only from the payments of principal and interest on the loans made by the state treasurer to a district or districts as provided in this section. State notes issued under the provisions of this section may be issued for the purpose of making loans to 1 or more districts.

(2) State notes issued under this section shall be issued only upon the written recommendation of the superintendent of public instruction based upon the determination of the department of treasury as provided in subsection (3) and upon the adoption of a resolution authorizing the issuance thereof by the state administrative board. The resolution shall specifically approve the recommendation, briefly describe the loan or loans to be made, the amount, maturity schedule, maximum rate

of interest, date and form of the state notes, and shall contain an irrevocable pledge for the payment thereof of the loan repayments to be made by the district or districts receiving a loan under this section. The principal amount of the notes shall not exceed the amount of the loan or loans to be made plus an amount sufficient to pay the costs of issuing and delivering the state notes. The state notes shall mature serially with annual maturities in not more than 10 years from their date and shall bear interest, payable annually or semiannually, at a rate of not more than 6% per annum. The first principal installment on the state notes shall be due not more than 1 year from the date thereof and a principal installment on the state notes shall not be less than ⅓ of the principal amount of any subsequent principal installment. The state notes may be made subject to redemption prior to maturity with or without premium in a manner and at times as shall be provided in the resolution authorizing the issuance of the state notes. The maturity and interest rate of the state notes shall be so fixed as to permit payment of the principal of and interest thereon in full as the same becomes due from the loan or loans to be made to the districts as herein provided.

(3) The existence or projection of an operating deficit of any district and the amount thereof shall be determined by the department of treasury, using normal school accounting practices. If the department of treasury determines that for any district there is or will be at the close of the fiscal year ending June 30, 1973, an operating deficit, it shall make a determination so stating, which shall include the total amount of the operating or projected operating deficit, the amount of the operating or projected operating deficit per membership pupil and the payments to the district from the school aid fund established by section 11 of article 9 of the state constitution during the fiscal year immediately preceding the fiscal year in which the notes herein authorized are issued, adjusted to show what those payments would have been had they been derived only from the sales tax moneys required to be deposited in the school aid fund, hereinafter referred to as "sales tax state aid payments". The determination by the department of treasury shall be final and conclusive as to the existence of an operating deficit or projected operating deficit, the amount thereof, the amount thereof per membership pupil, and the sales tax state aid payments.

(4) Before any state notes are issued under this section the state treasurer shall make sworn application to the municipal finance commission on forms to be furnished by the municipal finance commission for permission to do so and shall attach thereto the determination of the department of treasury described in paragraph (3) of this section and a certified copy of the resolution authorizing the state notes. State notes shall not be issued hereunder until the state treasurer has first secured approval of the municipal finance commission to the issuance thereof and to the form of notice of sale proposed to be used. In determining whether a proposed issue of state notes shall be approved the municipal finance commission shall take into consideration: (a) Whether the state notes conform to the provisions of this section; and (b) whether the amounts pledged for the payment of the state notes will be sufficient to pay the principal and interest as the same becomes due.

(5) The state notes shall be sold at not less than par and at public sale after notice by publication at least 7 days before the sale in a publication printed in the English language and circulated in this state, which carries as part of its regular service notices of sale of municipal bonds and which is approved by the municipal finance commission as a publication complying with the foregoing qualifications.

(6) The state treasurer may make loans to a district that at any time has an operating or projected operating deficit in excess of $100.00 per membership pupil for the purpose of funding the operating or projected operating deficit or paying obligations issued to fund the deficit in accordance with this section but only from the proceeds of sale of state notes issued in accordance with this section. The making of the loan shall be evidenced by interest bearing notes of the district or districts to whom the loan is made, which notes shall pledge for their payment any funds of the district legally available therefor, and shall pledge as secondary security therefor any future state aid moneys. The loan shall be in a principal amount equal to the principal amount of state notes issued in accordance with this section or equal to that portion of a state note issue allocated for the purpose of making the loan. The principal installments of the loan by the state treasurer to the district shall become due 15 days prior to and in the same amounts as the principal installments on the state notes become due and the interest on the loan shall be at the same rate as the rate of

interest on the state notes and shall be payable 15 days prior to the interest payments on the state notes. In addition the district shall pay at the same time as each principal and interest payment on its loan becomes due the additional amount as may be necessary to pay paying agent fees, costs and expenses on the state notes. In case an issue of state notes is for the purpose of making loans to more than 1 district the provisions of this section relating to principal and interest repayments on the loans made and payment of paying agent fees, costs and expenses shall be allocated among the several districts to whom loans are made so that in the aggregate the amounts to be received shall be fully sufficient to pay principal of and interest on the state notes and the paying agent fees, costs and expenses thereon, as the same become due.

(7) The resolution of the state administrative board authorizing the state notes shall require the establishment of a debt retirement fund. The resolution of the district authorizing the loan from the state treasurer shall direct the treasurer of the district to pay to the state treasurer the amount due to the state treasurer pursuant to subsection (6), and if the payments are not duly made, authorize the state treasurer for and on behalf of the district to deposit in the debt retirement fund from the state school aid fund an amount equal to the aggregate amount of principal and interest due on the district note, such amount to be deducted from the next state school aid payment of the district. If the payments are not duly made, the state treasurer shall act as authorized in the resolution of the district authorizing the loan. Moneys deposited in the debt retirement fund shall be deemed to have been paid to the district. The state treasurer shall pay the principal of and interest on the state notes as they come due, together with paying agent fees, costs, and expenses in connection therewith, from moneys in the debt retirement fund, except that the moneys therein may be invested as part of the state's common cash. The maturity of any such investment shall not be later than the time when the moneys so invested will be required for the payment of interest or principal and interest on the state notes.

(8) The proceeds of sale of any state notes authorized under this section shall be used solely for the purpose of making loans to districts having an operating deficit as provided in this section and for the purpose of paying the costs of the issuance and delivery of state notes. The proceeds of sale of the state notes shall be deposited in a separate account to be established by the state treasurer to be designated "school operating note proceeds account". State notes shall not be delivered under this section until the district that is to receive a loan has authorized the borrowing of money and issuance of district notes and has delivered the district notes to the state treasurer in accordance with this section.

Sec. 140. (1) A board of education which borrowed pursuant to section 138 shall submit its budget for review and approval to the department. The department shall take any steps necessary to assure that the expenditures of a school district which receives moneys under this amendatory act shall not exceed revenues on an annual basis and that the school district maintains a balanced budget. The authority of the department of education shall not supersede any existing contracts made in good faith by a first class school district, or any existing statutory obligation of the school district.

(2) The school district shall file a report with the auditor general 45 days after the effective date of this act and every 30 days thereafter disclosing the results of the financial operation of the district for the first 30 days and 30 days thereafter following the effective date of this act. The auditor general shall evaluate the report and his findings shall be forwarded to the legislature.

Section 2. Pursuant to section 8 of article 3 of the state constitution, the legislature requests the opinion of the supreme court as to the constitutionality of this act.

Section 3. This amendatory act shall take effect March 13, 1973.

This act is ordered to take immediate effect.

Approved, March 13, 1973

ACT 12, MICH. PUB. ACTS OF 1973

AN ACT to provide for emergency financial assistance for school districts; to prescribe certain powers and duties of the intermediate board of education in connection therewith; to provide certain powers and duties of the state board of education in connection therewith; to create an emergency loan revolving fund; and to make an appropriation.

The People of the State of Michigan enact:

Sec. 1. As used in this act:

(a) "School district" does not include an intermediate school district.

(b) "State board" means the state board of education.

Sec. 2. The procedures provided by this act may be used notwithstanding provisions of law to the contrary.

Sec. 3. The board of education of a school district that, for the 1971-72 school year, because of loss of at least 5% of its state equalized valuation as a direct result of a decision on a property tax appeal, was unable to complete or after adopting a resolution to close the schools after completion of less than 180 days, was ordered by the superintendent of public instruction or the state board of education to complete a minimum of 180 days, and partly as a result of borrowing money to complete 180 days in the 1971-72 school year, is rendered unable for the 1972-73 school year to provide 180 days, or unable to provide 900 hours of instruction as established by state board rule, is eligible to apply for an emergency loan from the state, not to exceed $125,700.00.

Sec. 4. A school district to be eligible for an emergency loan shall certify, based upon a certified audit or informational examination by the auditor general or the department of treasury, that the school district meets the criteria of section 3.

Sec. 5. The board of education of a school district meeting the criteria set forth in sections 3 and 4 may apply to the state board for an emergency loan. If, after review, the state board of education finds that the district meets the criteria set forth in sections 3 and 4, a recommendation for an emergency loan shall be submitted to the governor. If the governor concurs with the recommendation he shall authorize an emergency loan.

Sec. 6. The board of education of a school district eligible to receive an emergency loan under this act shall issue notes in the amount of the emergency loan, made payable to the state, in equal installments, in not more than 10 years plus interest at 6% per annum beginning with the first fiscal year after receipt of the loan. The notes shall be payable out of all operating funds of the school district. The board of education shall submit its budget for review and approval to the state department of education. This budget shall be a balanced budget and shall include a minimum repayment of at least 10% of the original face amount of the loan received under this act, plus interest at 6% per annum. The district shall submit a monthly expenditure report to the board of education of the intermediate school district to which it is constituent.

Sec. 7. The board of education of the intermediate school district shall take steps necessary to assure that the expenditures of a school district which receives an emergency loan under the provisions of this act shall not exceed revenues on an annual basis and that the school district maintains a balanced budget.

Sec. 8. A school district not levying a minimum of 19.65 mills for operating purposes in the calendar year for which it receives an emergency loan shall be reorganized by the state board of education following recommendation by the state committee on reorganization of school districts.

Sec. 9. The state department of education shall take any steps necessary to assure that the expenditures of a school district which receives an emergency loan under the provisions of this act shall not exceed revenues on an annual basis and that the school district maintains a balanced budget.

Sec. 10. If, upon application for an emergency loan, a board of education certifies that the school district will not be able to balance its budget, the district shall be reorganized by the state board of education following recommendation by the state committee on reorganization of school districts.

Sec. 11. A school district receiving an emergency loan under the provisions of this act shall balance its budget in the fiscal year immediately following the fiscal year for which it receives an emergency loan or, following recommendation by the state committee on reorganization of school districts, shall be reorganized by the state board of education.

Sec. 12. A school district receiving an emergency loan under the provisions of this act, which defaults in repayment of the loan, shall be reorganized by the state board of education following recommendation by the state committee on reorganization of school districts.

Sec. 13. Prior to reorganization of a school district under this act, the state committee on reorganization of school districts shall hold a hearing in the district to be reorganized. Notice of the time and place of the hearing shall be given the voters of all school districts involved in the proposed reorganization. The boards of education of the intermediate districts involved in the proposed reorganization shall make recommendations to the state committee regarding the proposed reorganization.

Sec. 14. Within 20 days after receipt of a transcript of the hearing and recommendations of the boards of education of the intermediate districts, the state committee on reorganization of school districts shall determine if conditions exist warranting reorganization of the district under this act. Upon a determination by the state committee that conditions in a school district warrant reorganization, the state committee shall transmit its report with recommendations to the state board of education.

Sec. 15. The state board of education shall publish the report and recommendations of the state committee on reorganization of school districts and shall invite objections or comments to be filed with it within 20 days following publication of the report. The state board then shall consider the report of the state committee, together with the comments and objections filed, and make a determination as to indorsement of the finding of the state committee.

Sec. 16. The state board, upon indorsement of the finding of the state committee on reorganization of school districts that reorganization of a school district is warranted, shall reorganize the district with 1 or more districts contiguous to it in such a manner as will provide the most equitable educational opportunity for all of the students of the reorganized district, and shall determine the effective date of reorganization. Action by the state board of education shall be final.

Sec. 17. If a school district attached under the provisions of this act at the time of reorganization has a bonded indebtedness incurred after December 8, 1932, its identity shall not be lost and its territory shall remain as an assessing unit for purposes of such bonded indebtedness until the indebtedness has been retired or the outstanding bonds refunded by the reorganized district. The board of the reorganized district, or the boards of districts receiving school buildings with an existing bonded debt shall constitute the board of trustees for the original district having a bonded indebtedness and the officers of the reorganized or successor district shall be the officers for the original district. If any original bonds of the reorganized district have been refinanced in any way, the state board of education shall make the final determination as to placement of the responsibility with the 1 or more boards of education receiving the buildings as to their responsibility in acting as the board of trustees for the original district. The board of each district assigned the responsibility as the board of trustees for any bonded indebtedness of the divided district shall certify and order the levy of taxes for the bonded indebtedness in the name of the original district.

Sec. 18. Any time after 3 years following the reorganization of a school district under this act, a district receiving a building having an existing bonded indebtedness and assuming the responsibilities set forth in section 16, may assume the obligation of the bonded indebtedness incurred after December 8, 1932, of the school building attached to its district under the provisions of this act, and pay the same from the proceeds of a debt retirement tax levy spread uniformly over the territory of the reorganized or successor district when the electors of the reorganized or successor district approve an increase in the limitation on taxes for that purpose and the school tax electors of the district have approved the assumption of such bonded indebtedness. Assumption of the bonded indebtedness of an original school district does not release the territory of the original district from the final responsibility of paying the obligation or rescind the increase in the limitation on taxes pledged to the bond issue or available to it in the original district, nor be construed as so doing. When the bonded indebtedness of an original district has been so assumed, the board of the

reorganized or successor district shall certify and order the levy of taxes for the bonded indebtedness equiv
lent in terms of money to those required by the terms under which the indebtedness was originally incurr
and carry out all provisions of the original bond contract. The election to assume the bonded indebtedne
of an attached district may be held at any time after 3 years following the effective date of reorganizatio
when a proposal is placed before the school tax electors to increase the bonded indebtedness of the com
bined district.

Sec. 19. The board of education of a school district receiving an emergency loan under the provisio
of this act shall hold school for at least 180 days during the school year it received the loan and for eac
succeeding school year as required by law or its members shall be subject to removal from the board unde
section 253 of Act No. 269 of the Public Acts of 1955, being section 340.253 of the Michigan Compiled Law

Sec. 20. The school emergency loan revolving fund is created in the state treasury from which emergen
loans shall be made to school districts as provided in this act. The state treasurer shall issue his warrant t
the fund for the amount of the loan. The treasurer shall transfer repayments of the loan to the general fun
There is appropriated from the general fund to the school emergency loan revolving fund the sum o
$125,700.00.

Sec. 21. The loan provisions of this act shall expire June 30, 1974.

This act is ordered to take immediate effect.

Approved, April 18, 1973

MICHIGAN STATUTES

Michigan Compiled Laws
Annotated

340.69 Same; tuition and transportation of part of pupils to other districts

Sec. 69. The board may use money in the general fund or funds received from state appropriations for aid to school districts for the purpose of paying tuition and transportation to another district or districts of resident pupils, even though the grades in which such pupils may be enrolled are maintained within the district. P.A. 1955, No. 269, § 69, Eff. July 1.

340.121 Same; other duties

Sec. 121. The board of any school district of the third class shall have the powers and duties:

(d) **Tuition payments to other districts.** To use money in the general fund or funds received from state appropriations for aid to school districts for the purpose of paying tuition and transportation to another district of resident pupils, even though the grades in which the pupils may be enrolled are maintained within the district.

340.183 Annexed territory

Sec. 183. Whenever territory shall be annexed to the city comprising a school district of the first class, such territory, by such annexation, shall become and be part of the school district of that city. P.A.1955, No. 269, § 183, Eff. July 1.

340.184 Same; entire school district, bonds

Sec. 184. Whenever territory comprising an entire school district is annexed to the city and becomes a part of the city school district, the provisions of chapter 4 of part 2 of this act [1] shall govern where applicable with respect to the bonded indebtedness of either district existing at the time of annexation: Provided, That the board of education of a district of the first class may use any funds legally available to retire the bonded indebtedness of the district so annexed. P.A.1955, No. 269, § 184, Eff. July 1.

[1] Section 340.431 et seq.

340.185 Same; portion of school district, bonds

Sec. 185. Whenever territory constituting a portion of another district is annexed to a city and the district from which such territory is taken has outstanding bonded indebtedness, the provisions of chapter 5 of part 2 of this act [1] shall apply relative to such bonded indebtedness. P.A.1955, No. 269, § 185, Eff. July 1.

[1] Section 340.461 et seq.

340.251 Superintendent of public instruction; office, qualifications

Sec. 251. The superintendent of public instruction shall have general supervision of general instruction in all public schools and in all state institutions that are educational in their character, as follows: The university of Michigan, the Michigan state college of agriculture and applied science, the Michigan school for the deaf, the Michigan school for the blind, the boys' vocational school, the girls' training school, the several Michigan home and training schools, and any similar institution that may hereafter be created. He shall maintain his office at the seat of the state government. He shall be a graduate of a university, college or state normal school of good standing, and shall have had at least 5 years' experience as a teacher or superintendent of schools. P.A.1955, No. 269, § 251, Eff. July 1.

340.252 Same; duties

Sec. 252. It shall be the duty of the superintendent of public instruction:

(a) **State educational institution and governing boards.** To visit the state institutions mentioned above and meet with the governing boards thereof from time to time;

(b) **Deleted.**

(c) **School law observance, accounting by boards of education.** To require each board of education or the officers thereof to observe the laws relating to schools, to account for and pay over to the credit of the school district all moneys illegally expended or otherwise disposed of, and he shall have authority to compel such observance and accounting by appropriate legal proceedings instituted in courts of competent jurisdiction by direction of the attorney general;

(d) **Audit of school district official records, and accounts.** To examine and audit the official records and accounts of any school district

and require corrections thereof when necessary, and to require an accounting from the treasurer of any school district when deemed necessary;

(e) **Maintenance of educational facilities by school districts, safety, health.** To require all school districts to maintain school or provide educational facilities for all children resident in such district for at least the statutory period, and to require school boards to carry out his recommendations relative to the safety of school buildings, equipment and appurtenances, including all conditions that may endanger the health or life of the school children;

(f) **Report to governor and legislature, contents.** To prepare biennially and transmit to the governor, to be by him transmitted to the legislature at each biennial session thereof, a report containing a statement of the general educational conditions of the state; a general statement regarding the operation of the several state educational institutions and all incorporated institutions of learning; and to present plans for the improvement of the general educational system if in his judgment it is deemed necessary. The report shall also contain the annual reports and accompanying documents of all state educational institutions so far as the same may be of public interest, and tabulated statements of the annual reports of the several school officers of the school districts of the state, and any other matter relating to his office which he may deem expedient to communicate to the legislature;

(g) **Deleted.**

(h) **Welfare of public schools and educational institutions.** To do all things necessary to promote the welfare of the public schools and public educational institutions and provide proper educational facilities for the youth of the state;

(i) **Promotion of temperance.** To promote in the public schools of this state, in the normal colleges and universities of this state and among adult groups, scientific instructions as to the physical, psychological and sociological effects of alcohol and the benefits of temperance; to prepare and publish instructional and informational materials; and to promote temperance by such other means as may seem desirable; and

(j) **Uniform child and finance accounting records.** To prescribe appropriate uniform child and finance accounting records for use in the school districts of this state, and to make such rules and regulations for their adoption as he may deem necessary. P.A.1955, No. 269, § 252, Eff. July 1, as amended P.A.1965, No. 140, § 1, Eff. March 31.

340.252a Same; appointment of instructors; rules for their management

Sec. 252a. The superintendent of public instruction may set a time and appoint proper instructors for a state teachers' institute and for institutes in the several counties of the state, and make such rules and regulations for their management as he deems necessary. P.A.1955, No. 269, § 252a, added by P.A.1965, No. 140, § 1, Eff. March 31, 1965.

340.252b State plan for special education; noncomplying special education programs and services

Establishment of plan; rules; submission to legislature

Sec. 252b. (1) For the 1973–74 school year and thereafter the state board of education shall:

(a) Develop, establish and continually evaluate and modify in co-operation with intermediate school districts, a state plan for special education which shall provide for the delivery of special education programs and services designed to develop the maximum potential of every handicapped person. The plan shall coordinate all special education programs and services.

(b) Require each intermediate school district to submit a plan pursuant to subdivision (a) of section 298c,[1] in accordance with the state plan and approve the same.

(c) Promulgate rules setting forth the requirements of the plans and the procedures for submitting them.

(d) A preliminary state plan shall be submitted to the legislature on or before July 1, 1972.

(e) The final state plan shall be submitted to the legislature on or before March 1, 1973, including recommendations for funding special education programs and services.

Approval of noncomplying plans

(2) For the 1973–74 school year and thereafter, if a local school district claims the existence of an emergency, due to extreme financial conditions because of insufficient operating funds or due to a severe classroom shortage and which emergency the local district claims renders it unable to provide special education programs and services in compliance with section 771a,[2] it shall apply, in writing, to the state board no later than July 1 of the particular school year for approval to provide special education programs or services which do not comply with section 771a.

Application for approval, contents; grounds for approval; filing date extension

(3) In its application the local school district shall demonstrate the need to provide noncomplying special education programs and services and shall include the proposed programs and services it can provide and the efforts to be undertaken to alleviate the emergency. If the state board finds an emergency exists in the local school district for such school year, the state board may approve the providing of noncomplying special education programs or services and prescribe conditions therefor. The state board may extend the filing date for good cause.

Notice of noncompliance; direction to comply

(4) If the state board determines a local school district is not providing special education programs and services in compliance with section 771a, and the local school district has not obtained prior approval from the state board, the state board shall notify the local school district, in writing, of the noncompliance. Unless the local school district submits proof of compliance, or of an unforeseen emergency, within 30 days after receipt of the notice, the state board shall direct the intermediate district of which the local school district is a constituent to pro-

vide complying programs or services. The state board shall direct the intermediate district to provide only those programs or services which the state board determined are not in compliance with section 771a.

Funding of programs or services directed

(5) Special education programs or services which the state board directs an intermediate district to provide shall be funded as if provided by the local school district and the local school district shall contribute to the intermediate district the unreimbursed cost of the programs or services.

P.A.1955, No. 269, § 252b, added by P.A.1971, No. 198, § 1, Eff. July 1, 1972.

[1] Section 340.298c.
[2] Section 340.771a.

For effective date provision of P.A.1971, No. 198, see note following section 340.10.

340.253 Same; order of removal of board member; record; setting aside order of removal

Sec. 253. The superintendent of public instruction may remove from office, upon satisfactory proof and after at least 10 days' notice to the party implicated, any member of any board who shall have illegally used or caused to be used or disposed of in any manner whatever any of the public moneys entrusted to his charge, or who shall persistently and without sufficient cause refuse or neglect to discharge any of the duties of his office, and, in case of such removal, it shall be the duty of the said superintendent to have recorded in the office of the county superintendent of schools the order for such removal, and such record of such order so entered or a certified copy thereof shall be prima facie evidence in all courts and places of jurisdiction of the regularity of such proceedings for removal, and said superintendent shall file a similar copy of the proceedings in the records of his office. The party so removed may, within 30 days after such removal, institute proceedings before a court of competent jurisdiction for the setting aside of such order for removal from office. If no such proceedings are instituted within said 30 days, or, if such proceedings to set aside such order for removal shall be discontinued or dismissed, the said order for removal from office shall stand and shall not be subject to attack by any legal proceedings thereafter. P.A.1955, No. 269, § 253, Eff. July 1.

340.302a Intermediate school districts; consolidation, election, procedure; accounts, contracts

Sec. 302a. Two or more adjoining intermediate school districts may combine to form a single intermediate school district when the reorganization has been approved by a majority of the electors voting on the question of the constituent districts of each intermediate dis-

trict voting on the question in the annual elections of their constituent districts. The question of combining intermediate districts may be submitted by a resolution of the boards of the intermediate districts meeting in joint session, if approval of the election has been given by the state board of education. The question shall be submitted when petitions signed by a number of qualified electors of the constituent school districts of each intermediate school district, who are registered to vote in the city or township where they reside, equal in number to not less than 5% of the number of school memberships of the constituent districts of that intermediate district have been filed with the secretary of the board of any one of the intermediate school districts. On receipt of sufficient petitions the secretary shall apply for approval to the state board of education within 30 days and he shall cause the question to appear on the ballot of the next annual school election after such approval has issued. The ballots shall be furnished by the board of each intermediate school district for its constituent districts and shall be in substantially the following form:

"Shall the intermediate school districts of ..... and ..... counties be organized as a single intermediate district?

Yes ( )

No ( )"

The provisions of this chapter shall become effective in the combined intermediate districts 30 days after the date of the last election in a constituent school district provided that the consolidation has been approved by a majority of the electors voting on the question in each of the participating intermediate school districts, and thereafter the intermediate district shall be considered a single intermediate district subject to the provisions of this chapter. The members of the boards of the original intermediate district shall act as an interim board until a board of the combined intermediate district has been chosen, and shall possess all the powers and duties of a board as provided in this chapter. The person chosen by the interim board as superintendent shall serve only until his successor has been chosen by the elected board. The secretary of the board of the intermediate district having the largest number of children in membership in its constituent districts at the time of reorganization shall call the members of the interim board into session for the purpose of organization, on the day the reorganization becomes effective, unless that day is a Sunday or holiday, in which case it shall be the next succeeding day not a Sunday or a holiday. The secretary of the interim board shall take all necessary steps to provide for the election of a board of the reorgan-

ized intermediate district in accordance with the provisions of sections 294b to 294h of this act.[1] At the first election there shall be elected 3 members of a board for 6 years, 2 for 4 years and 2 for 2 years. At least 3 members shall be from 1 district if there are 2 intermediate districts that have joined together, at least 2 from each district if 3 districts joined and at least 1 member from each district if there are 4 or more intermediate districts joined together. Thereafter their successors shall be elected biennially for a term of 6 years. The time from the date of election to the next July 1 shall be considered 1 year. The combined intermediate district shall operate as a single intermediate district from the effective date of the reorganization. Within 10 days following the reorganization, all accounts of each intermediate school district becoming a part of the reorganized district shall be audited in accordance with provisions established by the interim board. The provisions of the contracts of the superintendents in force as of the effective date of reorganization shall continue in effect to time of termination except as to positions as superintendents. P.A.1955, No. 269, § 302a, added by P.A.1962, No. 190, § 1, Eff. March 28, 1963, as amended P.A.1964, No. 290, § 1, Eff. Aug. 28.

[1] Sections 340.294b–340.294h.

340.303a Same; annexation; board members

Sec. 303a. Any intermediate school district may be annexed to another intermediate school district whenever the board of the annexing district by resolution has determined, and a majority of the registered and qualified school electors of the intermediate district becoming annexed, voting on the question at an annual or special election in the constituent districts, has approved the annexation. If the annexing intermediate district has adopted the provisions of sections 307a to 324a of this act,[1] the electors of the constituent districts of the intermediate district to be annexed must vote to accept those provisions. The vote on the question shall be by printed or duplicated ballot furnished by the board of the district to be annexed. Before the election is held, the board of the annexing district shall obtain the approval of the state board of education of the proposed annexation. Within 10 days of the holding of such an election, each constituent district shall file the result with the secretaries of his respective intermediate district, and 5 days thereafter such secretaries shall file the result with the secretaries of the boards of the annexing district. Within 15 days after the election approving the annexation,

the members of the board of the annexed district shall account to the board of the annexing district for the funds and property in their hands and shall turn over the same to the board of the annexing district. All property and moneys belonging to the annexed district shall become the property of the annexing district and all outstanding indebtedness of the annexed district shall become the liability of the annexing district. Upon receipt of the funds and property by the board of the annexing district, the members of the board of the annexed district shall be released from liability therefor and their offices terminated. The effective date of the annexation shall be the latest date on which an election was held in a constituent district of the annexed intermediate district. The secretary of the board of the annexing district shall give written notice of the annexation to the state board of education within 15 days of the annexation. Within 30 days after the effective date of annexation, the board of the annexing district shall appoint 2 tax electors of the constituent districts of the annexed district to membership on the board of the reorganized district, who shall serve until July 1 following the next biennial election, and notification of the appointments shall be filed with the state board of education. If the appointments are not made within the 30 days, the state board of education shall make the appointments. At the next biennial election, members of the board shall be elected to the number and for the terms as required in section 302a of this chapter.[2] The terms of the members of the board whose terms have not expired shall determine the terms of the additional members to be elected. P.A.1955, No. 269, § 303a, added by P.A.1962, No. 190, § 1, Eff. March 28, 1963.

[1] Section 340.307a–340.324a.
[2] Section 340.302a.

340.330 Adoption of sections 340.330 to 340.330u; rescission

Sec. 330. Sections 330 to 330u [1] shall become effective whenever a majority of the registered electors of an intermediate district, present and voting in any one year, at the several annual or special school elections in the constituent districts, vote as provided in section 330a [2] to adopt the provisions of these sections. The effect of the provisions of these sections may be rescinded by the same process.
P.A.1955, No. 269, § 330 added by P.A.1968, No. 320, § 1, Imd. Eff. July 3, 1968.

[1] Sections 340.330 to 340.330u.
[2] Section 340.330a.

340.330a Adoption of sections 340.330 to 340.330u; submission to electors; date of election, notice

Sec. 330a. The question of adopting the provisions of sections 330d to 330u[1] may be submitted to the school electors of an intermediate district at the annual election or at a special election held in each of the constituent districts. The intermediate district board shall determine the date of such election and shall give notice to the boards of constituent districts at least 60 days in advance of the election that the question of adoption of these sections shall be submitted to the electors of the district on the date specified. When the question is presented at the annual school elections of constituent districts and any one or more constituent districts do not hold annual school elections, the intermediate district board shall call a special election in such districts to be held on the same date as that of the annual school elections. When the intermediate district board determines that the question of adopting sections 330d to 330u shall be submitted to the electors of the intermediate district at a special election in all constituent districts, the election shall be held and conducted by the same election officials and in the same manner as special elections of the constituent districts are conducted, except that all districts shall vote in the manner of registration districts.
P.A.1955, No. 269, § 330a, added by P.A.1968, No. 320, § 1, Imd. Eff. July 2, 1968.

[1] Sections 340.330d to 340.330u.

340.355 Discrimination; race, color, intellectual progress

Sec. 355. No separate school or department shall be kept for any person or persons on account of race or color. This section shall not be construed to prevent the grading of schools according to the intellectual progress of the pupil, to be taught in separate places as may be deemed expedient. P.A.1955, No. 269, § 355, Eff. July 1.

340.359 Nonresident children of taxpayers; tuition and transportation

Sec. 359. When nonresident pupils, their parents or guardians, pay school taxes in said district and such pupils are admitted to schools in the district, the amount of such total current school taxes shall be credited on their tuition and transportation in a sum not to exceed the amount of such tuition and transportation and they shall be required to pay tuition and transportation for only the difference therein. P.A.1955, No. 269, § 359, Eff. July 1.

340.361 Constitutions and civil government, instruction

Sec. 361. In all public, private, parochial and denominational schools within the state of Michigan, there shall be given regular courses of instruction in the constitution of the United States, in the constitution of the state of Michigan, and in the history and present form of civil government of the United States, the state of Michigan, and the political subdivisions and municipalities of the state of Michigan. P.A.1955, No. 269, § 361, Eff. July 1.

340.461 Transfer of territory between districts; approval

Sec. 461. The county board of education may, in its discretion, detach territory from 1 district and attach it to another when requested to do so by resolution of the board of any district whose boundaries would be changed by such action, or when petitioned by not less than ⅗ of the resident owners of the land to be transferred. The county board of education shall take final action in regard to the resolution or petition within a period of 60 days of the receipt of the resolution or petition. Only territory contiguous to a district may be transferred. Whenever the latest available taxable valuation of the area to be detached is more than 10% of the latest available taxable valuation of the entire school district from which it is to be detached, the action of the county board of education directing such detachment shall not be valid unless approved, at an annual or special election called for that purpose in the district from which the detachment is to be made, by an affirmative vote of a majority of the school tax electors of the district, voting thereon. P.A.1955, No. 269, § 461, Eff. July 1, as amended P.A.1957, No. 135, § 1, Eff. Sept. 27.

340.462 Same; notice of hearing, posting, publication

Sec. 462. The county superintendent of schools shall give at least 10 days' notice of the time and place of the meeting of the county board of education and of the proposed alteration in school district boundaries to be considered at said meeting, by posting such notice in at least 5 public places in each of the districts whose territory may be affected by such alteration and by publication at least once prior to such meeting in a newspaper of general circulation in the territory of the affected districts. P.A.1955, No. 269, § 462, Eff. July 1.

340.463 Same; districts in more than 1 county

Sec. 463. Whenever the territory of districts the boundaries of which would be affected by the proposed alteration extends into 2 or more counties, or whose boundaries as a result of the proposed alteration would extend into 2 or more counties, the county boards of education of all such counties shall meet jointly and sit as a single board to consider and act upon the request for the transfer of territory. The resolution or petition for the transfer of territory, as set forth in section 461 of this act,[1] may be addressed to and filed with the county board of any one of such counties and it shall then be the duty of the county superintendent of schools of such county to call the joint meet-

ing of the affected county boards and to give the notice of such meeting as set forth in section 462 of this act.[1] Action on the resolution or petition for transfer of territory shall be taken only at a meeting attended by at least a quorum of each of the county boards. At such joint meeting of the county boards of education, they shall elect 1 of their members chairman and another secretary thereof. P.A.1955, No. 269, § 463, Eff. July 1, as amended P.A.1957, No. 135, § 1, Eff. Sept. 27; P.A.1961, No. 162, § 1, Eff. Sept. 8.

[1] Section 340.461.
[1] Section 340.462.

340.464 Same; maps showing boundaries and alteration

Sec. 464. When the county board of education or the joint county boards of education have approved alterations in the boundaries of school districts, such board or joint boards shall cause a map to be prepared showing in detail the boundaries of the affected districts before the alteration in boundaries and the boundaries of territory annexed or detached. A copy of such map bearing the certification of the county superintendent of schools or the secretary of the joint boards shall be filed with the secretary of each affected district and with each affected township supervisor or city assessor. P.A.1955, No. 269, § 464, Eff. July 1.

340.465 Same; effective date; taking of property, accounting, adjournment of hearing

Sec. 465. In the resolution ordering the transfer of property, the county board or joint boards shall determine the effective date of such transfer, which shall not be less than 10 days from the date of the resolution, and shall determine whether any personal property of a school district is to be transferred and, when any real property owned by a school district is transferred to another district, determine an equitable payment for the taking of such property. The board or joint boards may require an accounting from the affected districts and, for the purpose of making its determination, may adjourn from time to time or subject to the call of the president of the board or chairman of the joint boards. P.A.1955, No. 269, § 465, Eff. July 1.

340.408 Same; effect on indebtedness; certification of taxes; collection

Sec. 408. Whenever territory is detached from a district which has a bonded indebtedness incurred after December 8, 1932, and transferred to another district, such territory shall remain as part of the district from which detached for the purpose of levying the debt retirement tax for such bonded indebtedness until such bonds have been redeemed or sufficient funds are available in the debt retirement fund for such purpose, but shall not be part of the district from which detached for the purpose of any subsequent bond issue, nor shall any portion of such territory so detached be part of the district from which detached for any tax levy hereafter imposed for the purpose of any prior bonded indebtedness created or assumed at a time when such portion of such territory so detached was not a part of a district or territory approving or assuming such bonded indebtedness. Such territory shall be a part of the district to which transferred for all other purposes. Such territory shall not be subject to a bond debt retirement tax levy for bonded indebtedness of the district to which transferred existing at the time of transfer until the bonded indebtedness of the district from which transferred existing at the time of transfer has been retired or sufficient funds are available and earmarked in the debt retirement fund for such purpose, or whenever the board of education of the district to which the property is transferred, by resolution, effective for a period of not more than 3 years, exempts such property from such debt levy. The school officials of the district to which such territory is transferred shall certify the required debt retirement levy for the bonds of the district from which such territory has been detached, and the territory over which it is to be spread, to the proper taxing officials when certifying the other taxes to be levied by said district, and the tax collecting officials shall remit the collections thereon along with other tax collections to the district to which the property is transferred, and the officials of said district shall immediately transmit such collections to the district from which the territory was taken.

Payment of pro rata share by transferee district, procedure

The district to which the land has been transferred may pay to the district from which the land has been detached the present value of the pro rata bonded indebtedness of the territory which has been thus detached. In such event the county board of education shall certify to the municipal finance commission the fact of the transfer, the description of the territory thus transferred, the bonded indebtedness of the district from which the territory has been detached, the assessed valuation of the district from which the territory has been detached, the assessed valuation of the territory thus detached, and such other information as the municipal finance commission may require. The municipal finance commission shall thereupon determine the pro rata share of the bonded indebtedness of the territory thus detached to the district from which the territory has been detached in accordance with sound bond accounting principles. The municipal finance commission shall thereupon certify to the county board of education the amount thus determined, and the county board of education shall certify such amounts to the districts affected. The district to which the territory has been transferred may pay to the district from which the territory has been detached such sum. Said settlement of the bonded indebtedness shall be made on the state equalized valuation in the year of transfer, and the district receiving such moneys shall apply the same in accordance with the terms and tenor of the bond issue. Any transfer made after September 1 in any given year shall be deemed a part of the territory from which detached for the purpose of the succeeding December tax levy, and the settlement

in such case shall be made after the December tax levy in the year of transfer. Upon settlement of the bonded indebtedness by the district to which the territory has been transferred, then the territory shall become subject to the bond debt retirement tax levy for bonded indebtedness of the district to which transferred existing at the time of transfer. For the purpose of making such settlement, the district to which the territory is attached may use up to 15% of any state aid money in any one year.
Amended by P.A.1969, No. 98, § 1, Imd. Eff. July 24.

340.466a Same; millage levy

Sec. 466a. When territory is attached to a district, effective prior to September 1 of any year, school operational millage for that year shall be levied on property in such territory by the attaching district. When territory is attached to a district effective on or after September 1 of any year, school operational millage for that year shall be levied on property in such territory by the district from which the territory is detached. The school officials of the district entitled to levy school operational millage within the transferred territory, shall certify the school operational millage, and the territory over which it is to be spread, to the proper taxing officials when certifying the ad valorem taxes to be levied by the district.
P.A. 1955, No. 269, § 466a, added by P.A.1967, No. 114, § 1, Imd. Eff. June 27, 1967.

340.467 Same; appeal to state board of education

Sec. 467. Any one or more resident owners of land considered for transfer from 1 district to another, or the board of any district whose territory is affected, may appeal the action of the county board of education or joint boards in transferring such land, or the failure to transfer such land, or the action taken relative to the accounting determination, to the state board of education within 10 days after such action or determination by the county board of education or the joint boards. If the county board of education or the joint boards fail to take action within the time limit prescribed in section 461,[1] the appeal may be made to the state board of education within 10 days following the termination of the period. Such appeal shall have the effect of holding the effectiveness of the resolution from which appealed in abeyance until the appeal is acted upon by the state board of education.

The state board of education is hereby empowered to consider such appeals and to confirm, modify or set aside the order of the county board of education or the joint boards and its action on any such appeal shall be final. P.A.1955, No. 269, § 467, Eff. July 1, as amended P.A.1957, No. 135, § 1, Eff. Sept. 27.

[1] Section 340.461.

340.468 Boundary change; students in twelfth grade; continuance without tuition

Sec. 468. In any case where the boundaries of a school district are changed, students in the twelfth grade at the time of the change or entering the twelfth grade at the beginning of the school year immediately following the change shall be allowed to continue attending school in the district which they attended before the change without the payment of tuition. P.A.1955, No. 269, § 468, added by P.A.1965, No. 263, § 1, Imd. Eff. July 21, 1965; P.A.1965, No. 375, § 1, Imd. Eff. July 23, 1965.

340.569 Teachers' contracts, contents, filing, termination

Sec. 569. The board of every district shall hire and contract with such duly qualified teachers as may be required. All contracts with teachers shall be in writing and signed by a majority of the board in behalf of the district, or by the president and secretary, or by the superintendent of schools or his designee when so directed at a meeting of the board. The contracts shall specify the wages agreed upon and in primary school districts shall require the teacher to keep a correct list of the pupils, grading and the age of each, attending the school, and the number of days each pupil is present, the aggregate attendance and percentage of attendance, and to file the same with the superintendent of the intermediate district and a true copy thereof with the secretary of the board at the end of the school year, and no teacher shall be entitled to receive his last payment for his services until the report shall be filed. The contract shall be filed with the secretary and a duplicate copy of the contract shall be furnished to the teacher. No contract with any person shall be valid unless such person shall hold a legal certificate of qualification at the time the contractual period shall begin, and all such contracts shall terminate if the certificate shall expire by limitation and shall not immediately be renewed, or it shall be suspended or revoked by proper legal authority. Any board after a teacher has been employed at least 2 consecutive years by the board may enter into a continuing contract with such teacher if the teacher holds a permanent or life certificate. A continuing contract is a contract which shall remain in full force and effect, as provided in the rules and regulations of the board, until the teacher resigns, elects to retire, is retired, or is dismissed for reasonable and just cause after a fair hearing. P.A.1955, No. 269, § 569, Eff. July 1, as amended P.A.1965, No. 14, § 1, Eff. March 31, 1966.

340.575 School term, minimum

Sec. 575. The board of every district shall determine the length of the school term. The minimum number of days of student instructions shall be not less than 180. Any district failing to hold 180 days of student instruction shall forfeit $\frac{1}{180}$th of its total state aid appropriation for each day of such failure. Not later than August 1, the board of every district shall certify to the department of education the number of days of student instruction in the previous school year. If the district did not hold at least 180 days of student instruction, the deduction of state aid shall be made in the following fiscal year from the first payment of state aid. Days lost because of strikes or teachers conferences shall not be counted as a day of student instruction. The state board of education shall establish rules for the implementation of this section.

Amended by P.A.1967, No. 237, § 1, Eff. Nov. 2; P.A.1970, No. 72, § 1, Imd. Eff. July 12.

340.582 Nonresident pupils, tuition; per capita cost

Sec. 582. The board of any district may admit to the district school nonresident pupils and shall determine the rates of tuition of such pupils and shall collect the same. Tuition for grades kindergarten to 6, inclusive, shall not exceed 25% more than the operation cost per capita for the number of pupils in membership in grades kindergarten to 12, inclusive. Tuition for grades 7 to 12, inclusive, shall not exceed 12½% more than 115% of the operation cost per capita for the number of pupils in membership in grades kindergarten to 12, inclusive. In districts not maintaining grades above grade 8, the tuition shall not exceed 25% more than the operation cost per capita for the number of pupils in membership in grades kindergarten to 8, inclusive. The operation costs and membership so used shall be those of the preceding fiscal year. The per capita cost herein referred to shall not be interpreted to include moneys expended for school sites, school building construction, equipment, payment of bonds, or such other purposes as shall be determined by the superintendent of public instruction not properly included in operation costs. P.A.1955, No. 269, § 582, Eff. July 1, as amended P.A.1958, No. 195, § 1, Eff. Sept. 13.

340.583 Grades, schools, departments, courses of study

Sec. 583. Every board shall establish and carry on such grades, schools and departments as it shall deem necessary or desirable for the maintenance and improvement of the schools; determine the courses of study to be pursued and cause the pupils attending school in such district to be taught in such schools or departments as it may deem expedient: Provided, That a primary district shall not operate any grades above the eighth. P.A.1955, No. 269, § 583, Eff. July 1.

340.589 Attendance areas

Sec. 589. Every board is authorized to establish attendance areas within the school district. P.A.1955, No. 269, § 589, Eff. July 1.

340.781 Physical education; establishment of courses in public and normal schools

Sec. 781. There shall be established and provided in all public schools of this state, and in all state normal schools, health and physical education for pupils of both sexes, and every pupil attending such schools of this state so far as he or she is physically fit and capable of doing so shall take the course in physical education as herein provided. P.A.1955, No. 269, § 781, Eff. July 1.

340.782 Same; instructors, equipment; sex hygiene; birth control; excuse from attendance

Sec. 782. It shall be the duty of boards in all school districts having a population of more than 3,000 to engage competent instructors of physical education and to provide the necessary place and equipment for instruction and training in health and physical education; and other boards may make such provision: Provided, That nothing in this chapter shall be construed or operate to authorize compulsory physical examination or compulsory medical treatment of school children. The board of any school district may provide for the teaching of health and physical education and kindred subjects in the public schools of the said districts by qualified instructors in the field of physical education: Provided, That any program of instruction in sex hygiene be supervised by a registered physician, a registered nurse or a person holding a teacher's certificate, qualifying such person as supervisor in this field: Provided, however, That it is not the intention or purpose of this act to give the right of instruction in birth control and it is hereby expressly prohibited to any person to offer or give any instruction in said subject of birth control or offer any advice or information with respect to said subject: Provided further, That any child upon the written request of parent or guardian shall be excused from attending classes in which the subject of sex hygiene or the symptoms of disease is under discussion and no penalties as to credits or graduation shall result therefrom. P.A.1955, No. 269, § 782, Eff. July 1.

340.789 Definition

Sec. 789. Sex education is the preparation for personal relationships between the sexes by providing appropriate educational opportunities designed to help the individual develop understanding, acceptance, respect and trust for himself and others. Sex education includes the knowledge of physical, emotional and social growth and maturation, and understanding of the individual needs. It involves an examination of man's and woman's roles in society, how they relate and react to supplement each other, the responsibilities of each towards the other throughout life and the development of responsible use of human sexuality as a positive and creative force.

P.A.1955, No. 269, § 789, added by P.A.1968, No. 44, § 1, Eff. Nov. 15, 1968.

P.A.1968, No. 44, became law without the governor's approval May 23, 1968.

340.887 Textbooks; approved list; contract with superintendent of public instruction, terms

Sec. 887. (1) No board or school official in any school district in this state shall purchase, procure by exchange, adopt or permit to be used in the schools of any such district any school textbook which is not listed with the superintendent of public instruction as hereinafter provided. Any person, firm or corporation desiring to offer school textbooks for adoption, sale or exchange in the state of Michigan shall file, when requested, with the superintendent of public instruction, copies of all such textbooks, together with a sworn statement of the usual list price, the lowest net wholesale price and the lowest exchange price at which said book is sold or exchanged for an old book on the same subject of like grade and kind but of a different series. No textbook shall be listed by the superintendent of public instruction unless the person, firm or corporation offering the same shall enter annually into a written contract, which shall become effective as of January 1 and shall remain in effect for a period of 1 year from such date, with the superintendent of public instruction, acting on behalf of the state of Michigan and the school districts thereof, which contract shall embrace the following terms and conditions:

(a) That said person, firm or corporation will furnish any of the books listed in said statement, and in any other statement subsequently filed by him, during the period of the contract, to any such district or any school corporation in the state of Michigan at the lowest price contained in said statement, and that said prices shall be maintained uniformly throughout the state;

(b) That the prices, as set forth in said statement, shall be automatically reduced in the state of Michigan whenever reductions are made elsewhere in the United States, so that at no time shall any book so filed and listed be sold or offered for sale by such person, firm or corporation in the state of Michigan at higher net prices than are re-

ceived for such book elsewhere in the United States, and regardless of whether such book is so sold or offered for sale elsewhere in accordance with the terms of a contract or otherwise;

(c) That all textbooks offered for sale, adoption, use or exchange in the state of Michigan shall be at least equal in quality to those requested to be deposited in the office of the superintendent of public instruction as regards paper, binding, printing, illustrations, subject matter, and any and all other particulars affecting the value of such textbooks;

(d) That in case any abridged or special edition of any of the books so listed by any person, firm or corporation is prepared thereby and offered for sale elsewhere in the United States at lower wholesale prices than the net wholesale price of said book or books according to the statement filed with the superintendent of public instruction, said person, firm or corporation shall file a copy of such special edition when requested, together with the price therefor, with the superintendent of public instruction, and shall sell and offer the same for sale for use in the public schools of the state of Michigan at the lowest net prices at which said book is sold or offered for sale elsewhere in the United States;

(e) That the person, firm or corporation shall not enter into any understanding, agreement or combination to control the prices of school textbooks or to restrict competition in the sale thereof for use in the public schools in the state of Michigan;

(f) That the superintendent of public instruction may, if he ascertains at any time that any person, firm or corporation listing books with him as herein provided is selling or offering for sale any such book or books elsewhere in the United States at lower prices than those for which said book or books are sold or offered for sale in the state of Michigan, cancel all filings on the part of any such person, firm or corporation, and remove from the list hereafter referred to all books sold or offered for sale by such person, firm or corporation.

388.371 Civics courses in high schools; prerequisite to diploma; students in military service

Sec. 1. In all Michigan high schools, offering 12 grades of work, a 1 semester course of study of 5 recitation periods per week or the equivalent thereof shall be given in civics, said course covering the form and functions of our federal and state governments and of county, city, township and village governments. Throughout the course

the rights and responsibilities of citizens shall be stressed. No diploma shall be issued by any high school to any student unless such student shall have successfully completed said course: Provided, That such civics course shall not be a graduation requirement for any high school student who has enlisted or been inducted into military service. As amended P.A.1951, No. 224, § 1, Eff. Sept. 28; P.A.1957, No. 27, § 1, Eff. Sept. 27.

388.681 Reorganization of school districts; definitions

Sec. 1. As used in this act:

(a) "Reorganization of school districts" means the formation of new school districts, the alteration of boundaries of established school districts, and the dissolution or disorganization of established school districts through or by means of any one or combination of the methods as set forth in this act.

(b) "State committee" means the state committee for the reorganization of school districts created in this act.

(c) "Intermediate committee" means the committee for the reorganization of school districts created in this act.

(d) "Plan of reorganization" means a concrete proposal for readjustment and realignment of the boundaries of school districts within an intermediate school district area.

(e) "Non-high school district" means a school district presently operating less than a kindergarten through twelfth grade program.

(f) "School code" means Act No. 269 of the Public Acts of 1955, as amended, being sections 340.1 to 340.984 of the Compiled Laws of 1948. P.A.1964, No. 289, § 1, Eff. Aug. 28.

388.682 State committee; appointment, distribution, vacancies, compensation

Sec. 2. There is created, for the term of time necessary to complete the requirements of this act, a state committee for the reorganization of school districts, appointed by the governor, and composed of 7 members, at least 1 of whom shall represent the Upper Peninsula, 1 the area above the Bay City-Muskegon line, and 5 shall be appointed in such manner as to represent fairly the remainder of the state. The superintendent of public instruction shall be the nonvoting chairman of the committee. Vacancies shall be filled by appointment of the governor. Members of the state committee shall serve without compensation. The members of the committee shall be appointed within 60 days after the effective date of this act. P.A.1964, No. 289, § 2, Eff. Aug. 28.

388.683 Same; officers, records, meetings, quorum

Sec. 3. Within 90 days after the effective date of this act, the state committee shall organize by electing a vice-chairman and a secretary.

The vice-chairman shall act as chairman at the request of the superintendent of public instruction. The secretary shall keep the records of official committee meetings and prepare and distribute materials as requested by the state committee. Meetings of the committee shall be held upon the call of the chairman or any 3 of the members thereof. Five members, which may include the superintendent of public instruction, constitute a quorum. P.A.1964, No. 289, § 3, Eff. Aug. 28.

388.684 Same; school district reorganization program, surveys, approval of proposals, reports

Sec. 4. The state committee shall:

(a) Within 12 months after the effective date of this act, develop policies, principles and procedures for a statewide school district reorganization program planned so that all areas may become part of a school district operating or designed to operate at least 12 grades. In no case can an intermediate district committee plan be submitted under this act which would require the merger of 2 or more school districts of the third class or higher. There shall be created no less than 500 school districts operating 12 grades.

(b) Direct area surveys and develop a manual of procedure to be printed and distributed to all intermediate district superintendents of schools.

(c) Perform either by itself or by its authorized representative any or all of the duties required by this act to be performed by the intermediate school district superintendent, the intermediate district board of education, the intermediate district committee, or the probate judge or judges, in case of failure by any or all of them to perform these duties.

(d) Review and approve or reject intermediate district plans within 60 days after receipt of plans from the intermediate district committees.

(e) Report to each intermediate district the acceptance or rejection of the proposed plans with recommendations for changes.

(f) Present a progress report on reorganization under this act to the state legislature on or before March 1 of each year. P.A.1964, No. 289, § 4, Eff. Aug. 28.

388.685 Intermediate committee; membership, election, vacancies, organization, duties

Sec. 5. (1) A committee shall be organized in each intermediate district in the state to be known as the intermediate district committee for the reorganization of school districts. The intermediate district superintendent of schools shall be nonvoting chairman of the intermediate district committee, and he shall preside over all meetings of the intermediate district committee. The intermediate district committee shall complete the requirements of this act and comply with the requests made by the state committee.

There shall be 18 members on the intermediate district committee each of whom shall be a registered resident elector. In intermediate districts containing no district operating 12 grades or more and in intermediate districts containing no non-high school districts the committee shall consist of 13 members.

(2) Members of the intermediate district committee shall be chosen as follows:

(a) The intermediate board of education shall appoint 3 of its members to serve on the committee.

(b) The intermediate district superintendent of schools, by notice sent by mail, shall call a meeting of the boards of education of all school districts operating a program of 12 grades or more in the intermediate district. The meeting shall be held at some convenient place within the intermediate district within 60 days after the effective date of this act. The intermediate district superintendent shall act as chairman of this meeting, and the board members shall elect by ballot 5 persons to serve on the intermediate district committee not more than 2 of whom shall be from any one constituent district, unless there are fewer districts than there are positions to fill. The 5 persons receiving the highest number of votes shall be declared elected. No person may be elected to or serve on the committee who is an employee of any constituent school district or of the intermediate school district. The chairman shall appoint 3 or more tellers to conduct the election and to canvass the vote. Whenever not more than 2 of the 5 members fail to serve on the committee, the remaining members shall fill the vacancy from the same constituent district in which the vacancy occurs. Whenever 3 or more vacancies occur at the same time, the vacancies shall be filled in the same manner as the original committee members were elected.

(c) The intermediate district superintendent of schools, by notice sent by mail, shall call a meeting of the boards of education of all school

districts operating less than a twelve-grade program in the intermediate district. The meeting shall be held at some convenient place within the intermediate district within 60 days after the effective date of this act. The intermediate district superintendent shall act as chairman of this meeting, and the board members shall elect by ballot 5 persons to serve on the intermediate district committee not more than 2 of whom shall be from any one constituent district, unless there are fewer districts than there are positions to be filled. The 5 persons receiving the highest number of votes shall be declared elected. No person may be elected to or serve on the committee who is an employee of any constituent school district or of the intermediate school district. The chairman shall appoint 3 or more tellers to conduct the election and to canvass the vote. Whenever not more than 2 of the 5 members fail to serve on the committee, the remaining members shall fill the vacancy from the same constituent district in which the vacancy occurs. Whenever 3 or more vacancies occur at the same time, the vacancies shall be filled in the same manner as the original committee members were elected.

(d) The intermediate district superintendent of schools, by notice sent by letter, shall notify the probate judge of the area, who, within 60 days after the effective date of this act, shall appoint 5 members to the committee fairly representing all areas of the intermediate district. The qualifications of these members shall be the same as those of the other members of the committee. The probate judge shall fill all vacancies that may occur among his appointees. In any intermediate district where there are 2 or more probate judges the judges acting jointly shall make the appointments.

(3) Organization of the intermediate district committee shall be completed in each district within 6 months after the effective date of this act. If an intermediate district committee has not been organized within 6 months, the state committee shall appoint the members within 60 days thereafter. In which event the same limitations shall apply as provided in this section. P.A.1964, No. 289, § 5, Eff. Aug. 28.

388.686 Same; meetings, records; district reorganization plan, hearings, approval, revision, dissolution of committee

Sec. 6. Each intermediate district committee shall elect a secretary who shall keep the minutes and records of all official meetings. Meetings shall be held upon the call of the chairman or any 3 members of the committee. A majority of the committee shall constitute a

quorum. The intermediate district committee shall follow the procedure guide provided by the state committee and prepare a district reorganization plan, which shall be submitted to the state committee for its approval or disapproval. The plan shall provide for the reorganization of school districts within the intermediate district so that all areas of the district may become a part of a school district operating or designed to operate at least 12 grades. The intermediate district committee shall hold at least 1 public hearing regarding the plan but may hold as many more as it deems necessary. Hearings shall be advertised by publication at least once in a newspaper of general circulation in the districts 10 days or more before the scheduled hearing. The intermediate district plan for reorganization shall be submitted to the state committee for its consideration within 9 months after receiving the manual of procedure from the state committee. If the intermediate district plan is approved by the state committee, the plan shall be submitted to the electors as provided in section 7 of this act.[1] If an intermediate district plan is rejected by the state committee, a revised plan shall be submitted by the intermediate district committee within 90 days after receipt of the rejection of the original plan. If the revised plan is not accepted by the state committee, the state committee shall submit a plan for the reorganization of the school districts in the intermediate school district and the intermediate committee shall also submit a plan for the reorganization of the school districts in the intermediate school district. The intermediate school district board shall submit both plans to the electors of the intermediate school district and the plan receiving the larger number of votes shall be submitted to the qualified electors of the intermediate school district in accordance with the requirements of method 2 provided in section 7 of this act. Following this election, the intermediate committee shall be dissolved and the requirements of this act shall have been met and no further plans shall be re-submitted for 5 years by either the state committee or the intermediate district. The intermediate district committee shall also be dissolved on completion and acceptance of the plan by the state committee and the vote or votes on the plan by the electors of the proposed school district. P.A.1964, No. 289, § 6, Eff. Aug. 28.

[1] Section 388.687.

388.687 Optional methods of election for adoption of reorganization plans, conduct

Sec. 7. Not less than 90 days nor more than 6 months following approval of an intermediate district plan as provided in section 6 of this act [1] elections shall be held according to one of 2 methods. The intermediate district committee shall determine which election method shall be used.

Method 1. The entire area encompassed by the intermediate district plan shall vote as a unit on the question: "Shall the approved reorganization plan for the ..... intermediate district be adopted?

Yes ( )
No ( )"

If a majority of the qualified electors present and voting approve the plan it shall be declared adopted and shall become effective throughout the area on the date of the election if the election is held after April 30 but before September 1. The effective date shall be July 1 following if the election is held after August 31 but before May 1.

Method 2. The proposed districts provided for in the approved plan shall vote by proposed districts on the question: "Shall the approved reorganization plan for a proposed local district ..... within the intermediate district of ..... be adopted?

Yes ( )
No ( )"

If a majority of the qualified electors present and voting in a proposed district approve the plan for that proposed district it shall be declared adopted and shall become effective throughout the proposed district on the date of the election if the election is held after April 30 but before September 1. The effective date shall be July 1 following if the election is held after August 31 but before May 1.

If election method number 1 is adopted by the intermediate district committee and if the question voted on fails to obtain an affirmative majority, then another election using method number 2 shall be held not less than 90 days nor more than 6 months after the date of the first election. The results of this election using method number 2 shall be final and the requirements of this act shall have been met.

If the intermediate district plan provides that the boundaries of an existing school district shall remain the same such district shall not participate in an election held under either method number 1 or method number 2.

If the election is held under method number 1, the plan to be voted on shall not cause an existing school district to be divided between 2 in-

termediate districts but property transfers may be made later according to the provisions of chapter 5, part 2 of the school code.[2] The plan may provide for division of districts within an intermediate district.

If and when voting method number 2 is used, the plan shall not cause an existing school district to be divided between 2 proposed local districts within the intermediate unit but property transfers may be made later according to chapter 5, part 2 of the school code.

No property transfers shall be made after the approval of the intermediate district plan by the state committee until after the elections provided for in this section have been held.

The question of assumption of bonded indebtedness shall not be included in any election held under the provisions of this act but the provisions of sections 412 and 413 of the school code [3] regarding assumption of debt shall apply.

The qualifications of electors shall be the same as now provided in the statutes for votes on consolidation and annexation and the provisions of the general election laws shall apply.

The board of education of the intermediate school district shall conduct the election or elections provided for in this section according to the general election laws and according to chapters 7 and 8 of part 2 of the school code.[4] P.A.1964, No. 289, § 7, Eff. Aug. 28.

[1] Section 388.686.
[2] Section 340.461 et seq.
[3] Sections 340.412, 340.413.
[4] Sections 340.511 et seq., 340.531 et seq.

388.688 Classification of districts formed

Sec. 8. Districts formed under the provisions of this act shall be classified as second, third or fourth class districts depending upon the school census as provided for in chapters 3, 4 and 5, part 1 of the school code.[1] P.A.1964, No. 289, § 8, Eff. Aug. 28.

[1] Sections 340.51 et seq., 340.101 et seq., 340.141 et seq.

388.689 Consolidation, annexation or division of districts

Sec. 9. After the effective date of this act, the superintendent of public instruction, when requested to approve a consolidation, annexation or division of a district, shall give careful consideration to the progress of the implementation of the requirements of this act. P.A. 1964, No. 289, § 9, Eff. Aug. 28.

388.690 School aid, apportionment

Sec. 10. School districts formed under the provisions of this act shall be entitled to and receive financial aid from the state in the manner provided by legislative appropriation for school aid purposes except that the apportionments of state aid due any school district formed under this act in the 2 fiscal years next following reorganization shall not be less than the aggregate of state aid which would have been due proportionately to the component districts prior to the reorganization. It shall be the duty of the superintendent of public instruction in making apportionments of state aid to adjust the amount of state aid due each such school district accordingly. P.A.1964, No. 289, § 10, Eff. Aug. 28.

388.691 Board of education of newly-formed district

Sec. 11. Where the proposed district involves expansion of the boundaries of an existing twelve-grade district by addition of non-twelve-grade territory the board of education of the twelve-grade district shall continue as the board of the enlarged district.

Where the proposed district involves the merger of 2 or more twelve-grade districts with or without the addition of non-twelve-grade territory, or where the proposed district involves merger of non-twelve-grade districts into a new twelve-grade district a board of education fairly representing all areas of the new district shall be appointed by the intermediate district board to serve until a new board is elected as provided in section 410 of the school code.[1] P.A.1964, No. 289, § 11, Eff. Aug. 28.

[1] Section 340.410.

388.692 Board of education of district losing identity, records, property

Sec. 12. The boards of education of any district which lose identity shall turn over their books, records, funds and property to the new board within 10 days after the effective date of the reorganization. If any existing district is divided, the intermediate district board, or boards, shall specify the division of assets and liabilities. P.A.1964, No. 289, § 12, Eff. Aug. 28.

388.693 Final report; termination of act

Sec. 13. The state commission shall make a final report to the state legislature on or before September 1, 1968, and this act shall expire on the date of filing the final report. P.A.1964, No. 289, § 13, Eff. Aug. 28.

388.851 Public or private school buildings; construction requirements, waiver

Sec. 1. No school building, public or private, or additions thereto, shall be erected, remodeled or reconstructed in the state except it be in conformity with the following provisions:

(a) All plans and specifications for buildings shall be prepared by, and the construction supervised by, an architect or engineer who is registered in the state of Michigan. Before the construction, reconstruction or remodeling of any school building or addition thereto is commenced, the written approval of the plans and specifications by the superintendent of public instruction or his authorized agent shall be obtained. The superintendent of public instruction or his authorized agent shall not issue such approval until he has secured in writing the approval of the state fire marshal, or the appropriate municipal official when certification as described in section 31 has been made, relative to factors concerning fire safety and of the health department having jurisdiction relative to factors affecting water supply, sanitation and food handling.

The superintendent of public instruction shall publish an informative bulletin which shall set forth good school building planning procedures and interpret clearly the provisions of this act. The bulletin shall be prepared in cooperation with the state fire marshal and the state health commissioner and, insofar as requirements for approval of plans are concerned, shall be consistent with recognized good practice as evidenced by standards adopted by nationally recognized authorities in the fields of fire protection and health.

(b) All walls, floors, partitions and roofs shall be constructed of fire-resisting materials such as stone, brick, tile, concrete, gypsum, steel or similar fire-resisting material. All steel members shall be protected by at least ¾ of an inch of fire-resisting material.

(c) No wood lath or wood furring shall be used. These regulations shall not be construed as prohibiting the use of finished wood flooring, wood door and window frames, wood sash or wood furring and grounds, for the purpose of installing wood trim, panelling, acoustical units or similar facing materials on masonry walls, structural steel or concrete ceiling members.

(d) Every room enclosing a heating unit shall be enclosed by walls of fire-resisting materials and shall be equipped with automatically closing fire doors; and said heating unit shall not be located directly beneath any portion of a school building or addition thereto which is constructed or reconstructed after the effective date of this act. This regulation shall not be construed to require the removal of an existing heating plant from beneath an existing building when an addition to such building is constructed unless the state superintendent of public instruction or his authorized agent, acting jointly with the state fire marshal, shall so require in the interests of the public safety. In any school where natural gas or any other kind of gas is used for heating purposes, the gas shall be chemically treated before being used in such a manner as to give a very distinguishable odor if any leak should develop in the heating system.

(e) In gymnasiums, fire-proofings may be omitted from the trusses and purlins if they are more than 16 feet of the main floor level. The architect or engineer shall provide adequate exits from all parts of school buildings. In all cases there shall be at least 2 stairways and the distance from the door of any class or assembly room to a stairway or exit shall not exceed 100 feet.

(f) Provisions in subdivisions (b) to (e) may be waived in writing by the state fire marshal.

As amended P.A.1968, No. 239, § 1, Eff. Sept. 1.

388.1010 Same; powers and duties

Sec. 10. The state board of education shall also have the following powers and duties:

(a) Determination of the requirements for, and issuance of, all licenses and certificates for teachers and the endorsement of teachers as qualified counselors in the public schools of this state.

(b) Jurisdiction and control of the Michigan school for the deaf at Flint, the Michigan school for the blind at Lansing, and the Michigan rehabilitation institute for veterans and disabled adults at Pine lake, including power to make rules * * * for the schools necessary to enforce discipline, preserve health and provide for proper physical, intellectual and moral training of their pupils.

(c) Regulation of school bus transportation, review of the annexation or attachment of nonoperating school districts to operating school districts, and the hearing of appeals from decisions on alterations of boundaries of school districts as may be provided by law. The board may appoint a hearing officer to hear the appeals from decisions on alterations of boundaries of school districts who shall prepare a written report for consideration of the board. A copy of the written report shall be furnished to the designated appellant and appellee, who within 20 days may file written objections to the report with the state board of education for its consideration. After considering the report of the hearing officer and any objections filed by interested parties, the board may determine the appeal or order a hearing by it of the appeal from the decision on alterations of boundaries of school districts.

(d) Inspection of educational corporations as may be provided by law.

(e) The appointment * * * of the members of the state board for public community and junior colleges, as provided by law.

Amended by P.A.1969, No. 229, § 1, Eff. July 1, 1971.

388.1117 Statements of amount to be distributed; warrants

Sec. 17. On or before August 1, October 1, December 1, February 1, April 1 and June 1, the department shall prepare a statement of the amount to be distributed in the installment to the districts and deliver the statement to the state treasurer, who shall draw his warrant in favor of the treasurer of each district for the amount payable to the district according to the statement and deliver the warrants to the treasurer of each district.

P.A.1972, No. 258, § 17, Imd. Eff. Aug. 8.

388.1171 Amount of and prerequisites for grants of aid; routes, distance, and suitability and number of vehicles and equipment, review, confirmation, setting aside, or amending actions or decisions

Sec. 71. (1) Districts transporting pupils from the vicinity of their homes to the schools they attend and return shall be granted allotments from the school aid fund in amounts determined by the department but not to exceed 75% of the actual cost of the transportation. Allotments shall not be granted for the transportation of children living within 1½ miles of the schools they attend. Transportation distances shall be measured along public streets and highways.

(2) Although the children may live 1½ miles or more from the schools they attend, allotments shall not be granted for the transportation of children living within the corporate limits of cities or villages unless 1 of the following conditions exists for the children transported:

(a) The children transported live in a district organized prior to July 1, 1955 as a township or a rural agricultural school district.

(b) The children transported live within a district and within city or village limits the major portion of which is in a district organized prior to July 1, 1955 as a township or rural agricultural school district.

(c) The children transported live within a city or village and the larger pupil population of the city or village is contained in another single district and no school the children can attend is operated in the portion of the city or village within the district.

(d) The children transported live in a district, containing 2 or more cities or villages or parts of 2 or more cities or villages, operating 1 high school and 1 junior high school or 1 combination junior-senior high school and the children transported are enrolled in grades 7–12 and the school building in which these grades are taught is located outside the corporate limits of the city or village in which they reside.

(e) The children live within a district and within city or village limits and attend a public school located outside any city or village.

(f) The children live within a district and within a city or village and the shortest available route requires a bus to leave the city or village over streets or highways outside of any city or village and return to the city or village in which their public school is located and they ride in the bus at the time of exit from the city or village.

(g) The children live within a district and are transported to another district for education in grades not provided in the district in which they reside.

(3) Upon investigation the department shall review, confirm, set aside or amend the action, order or decision of the board of any district with reference to the routes over which children shall be transported, a distance they shall be required to walk, and the suitability and number of vehicles and equipment for the transportation of the children.

(4) An allotment for transportation shall not be allowed a district which operates a bus route disapproved by the department.
P.A.1972, No. 258, § 71, Imd. Eff. Aug. 8.

388.1134 Approval as prerequisite to issuance of notes; necessity, application for approval; certificate of approval, contents; multiple borrowings in single year

Sec. 134. Notes shall not be issued for borrowing under this chapter without the prior approval of the department for which approval application shall be made by the district. The department shall issue a certificate of approval which shall show the amount of state aid allocated to the district for the present and, if applicable, for the next succeeding fiscal year and any payments distributed to the district prior to the date of the certificate. A district may make more than 1 borrowing under this chapter during any school year.
P.A.1972, No. 258, § 134, Imd. Eff. Aug. 8.

340.600 Transportation of pupils; authority of superintendent of public instruction as to routes, walking, suitability and number of vehicles

Sec. 600. The superintendent of public instruction shall have authority by himself or someone designated by him, to review, confirm, set aside or amend the action, order or decision of the board of any school district with reference to the routes over which pupils shall be transported, the distance such pupils shall be required to walk, and the suitability and number of the vehicles and equipment for the transportation of the pupils. P.A.1955, No. 269, § 600, Eff. July 1, as amended P.A.1963, No. 241, § 1, Eff. July 1, 1964.

388.629 Nonresident pupils, certificate

Sec. 19. The secretary of the board of education of each district enrolling nonresident pupils shall certify to the superintendent of public instruction on forms furnished by the superintendent of public instruction, the number of nonresident pupils enrolled in each grade on the fourth Friday following Labor Day of each year, the districts in which the nonresident pupils reside, the amount of tuition charged for the current year, and any other information required by the superintendent of public instruction. P.A.1957, No. 312, § 19, Eff. July 1, as amended P.A.1958, No. 22, § 1, Eff. July 1; P.A.1959, No. 267, § 1, Imd. Eff. Sept. 18.

388.643 School district reports; salary schedule; failure, forfeiture

Sec. 33. Before the first Monday in November of each year each school district of this state shall furnish to the superintendent of public instruction such reports as he shall deem necessary for the determination of the allotment of funds under the terms of sections 8 et seq. of this act.[1] Each school district employing 25 teachers or more shall furnish to the superintendent of public instruction a copy of its salary schedule and a statement to what extent the schedule is being observed. Any school district which fails through the negligence of its officers to file reports in accordance with this section shall forfeit such proportion of funds to which said district would otherwise be entitled under the terms of sections 8 et seq. of this act as the delay in said report bears to the school term as required by law for such district. P.A. 1957, No. 312, § 33, Eff. July 1.

[1] Section 388.618 et seq.